THE LAW RELATING TO ESTATE DUTY IN INDIA

BEING A PRACTICAL GUIDE TO THE LAW RELATING TO PROBATE AND ADMINISTRATION DUTY PAYABLE ON ESTATES IN INDIA

WITH CHAPTERS SHOWING THE HISTORY OF THE LAW, MODE AND METHOD OF VALUATION AND ADJUSTMENT WITH APPROPRIATE FORMS, ALSO A SPECIAL CHAPTER RELATING TO THE LAW IN ENGLAND

BY

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CALCUTTA:
BUTTERWORTH & CO. (INDIA), LTD., 6, HASTINGS ST.

WINNIPEG:
BUTTERWORTH & Co. (Canada), Ltd.

SYDNEY:
BUTTERWORTH & Co. (Australia), Ltd.

LONDON:
BUTTERWORTH & CO., BELL YARD, TEMPLE BAR,
1918.

PRINTED BY
CALEDONIAN PRINTING COMPANY, LIMITED.
3, WELLESLEY PLACE, CALCUTTA

PREFACE

THERE is not, so far as I am aware, any work in India which deals exclusively with the subject of Estate Duty.

This particular branch of the law, is contained in what is known as the Court Fees Act.

The provision of the Act, *viz.*, Chapter III A, dealing with estate duty is an addition to the Act, as originally framed. It was first inserted by Act XIII of 1875, and it has thereafter been added to, and amended, from time to time.

In this connection attention is directed to the remarks in Part ii, Chapter I, relating to the history of the law (page 3).

It must, it is submitted, be obvious to any one, who has had any practical experience in dealing with this subject, that this piecemeal form of legislation is anything but satisfactory. It has not only led to a considerable amount of inconvenience, but also to difficulties in construction. In framing amendments, it is, to my mind, clear that the Legislature did not give due weight to some of the then existing sections, and further, owing to the change in method introduced by Act XI of 1899, and the subsequent sliding scale of duty, some of the previous sections, it is submitted, are now obsolete.

I have endeavoured in this work to draw attention to certain defects and inconveniences arising from the existing law, perhaps the chief

of them being, as to the existing method of valuation, and subsequent adjustment.

For purposes of comparison, I have set out in the Appendix, two of the principal forms of affidavit in use in England, and I have also endeavoured to set out a sample form of affidavit of valuation of assets, as should be used, under the existing law, and also forms to be used in the adjustment of duty—a subject, to which too little attention is paid by private executors, and administrators.

From experience gained, I am clearly of opinion that the time has now arrived when the Legislature should reconsider the entire revision of the law, and I would strongly urge the framing of a separate Act dealing exclusively with the question of Estate and Succession Duty. Such an Act could be called "The Indian Estate and Succession Duty Act."

In such an Act could be included provisions, not only, for method of valuation, but also for a revised rate of duty, and method of payment, adjustment, etc. A set of forms could also be incorporated, which should greatly facilitate matters, not only for the public, but also for the Revenue Officers.

In conclusion, I trust that the work now laid before the public, will be of use, not only to Government, in dealing with the points arising, but also to the public in completely understanding the provisions of the existing law on the subject.

23*rd July* 1918. ALEX. KINNEY.

TABLE OF CONTENTS

INDEX OF CASES CITED OR REFERRED TO.

CHAPTER I.

It is proposed herein to discuss as briefly as possible the following points:—

1. The object of Estate Duty.

2. The History of the Law in India.

3. Existing method of assessing, and payment, and certain inconveniences arising therefrom.

4. Short summary of the Law in England, as to Probate, Account Duty, Temporary Duty, Estate Duty, Settlement Duty, Legacy and Succession Duties.

Part I.—Object of Estate Duty.

The levying of Estate duty, or Probate, and Administration Duty, is in one sense a mode of taxation, and I venture to submit that it is a form of taxation least obnoxious to the public at large.

There is not in India, as in England, duty payable on legacies, or on successions. Succession to immovable property is governed by the law in India, and it is only in cases where the domicile of the deceased, is not in British India, that such duty would attach as to movables, and this only in cases governed by the Succession Act. Those

Estates governed by the Probate and Administration Act would in any case be exempt from this duty.

It must not, however, be overlooked that there is a right of re-adjustment on the Indian assets. (*See Thomson* v. *Attorney-General*, 13 *Sim.* 153, *as to Legacy Duty and Succession Duty and section* 20, *Finance Act*, 1894, *which section has been applied to India by an Order in Council, and see Attorney-General* v. *Jewish Colonisation Association*, 82 *T.L.R.* 679.)

It may perhaps be said, that as the law stands, the only duty, therefore, you have in Indian Law is either the Probate, or Administration Duty, and the Succession Certificate Duty, payable under Articles 11, 12 and 12A of the 1st Schedule to the Court Fees Act (being Act VII of 1870 as subsequently amended).

This form of taxation, therefore, can only affect persons in either one or the other of the following classes : (1) Residuary Legatee, or Legatees; (2) Next-of-kin. In some cases legatees may be affected owing to the assets not being sufficient to pay the legacies in full. There is, however, it is submitted, no direct burden cast upon them, and they cannot complain, as in one sense it is only by the fact of their having been born that they benefit, and they cannot be said to have contributed to what at times may amount to a fortune which they inherit, by virtue of a will, or being one, or, it may be, the sole next-of-kin.

Estate Duty in India does not fall upon every estate as it does in England. In other words, it is not the estate of every one, which is made liable for this duty. Owing to personal laws, property in certain cases passes by survivorship, such as under the joint family system, and in such cases, therefore, although the property may stand in the name of a deceased member, it may still be treated as joint property, and thus be exempt from duty; and in fact it may not even be necessary to apply for a grant, or succession certificate, in respect of the property. There are no doubt grave reasons why this should be, but it seems to me that where members of joint families deal with properties such as securities, etc., as if they were the absolute owners, not only should grants to their estates be made compulsory, before effecting a transfer of such securities, but they should also be made liable for the payment of the duties, which an absolute owner's estate would have been liable for.

Furthermore, it does not seem clear why privileges should be given to them not accorded to others when an application is made for a grant (*see Notes and Cases under section* 19*D*).

PART II.—HISTORY OF ESTATE DUTY IN INDIA.

The Act which introduced the payment of duty on Probates, Letters of Administration and Certificates was the Court Fees Act of 1870, being Act VII of 1870.

The Article of the 1st Schedule to that Act which deals with the matter reads as follows:—

	Ad-valorem Fee.	Proper Fee.
11. Probate of a will or letters of administration with or without will annexed.	If the amount or value of the property in respect of which the probate or letters of administration shall be granted exceeds one thousand rupees.	Two per centum on such amount or value.
12. Certificate granted under Act XXVII of 1860 (*for facilitating the collection of debts on succession and for the security of parties paying debts to the representatives of deceased persons*) or under Bombay Regulation VIII of 1827 (to provide for the formal recognition of heirs, executors and administrators and for the appointment of administrators and Managers of property by the Courts).		

There was a note to this Article requiring the certificate-holder within twelve months, and thereafter when required, to file a statement on oath of all moneys recovered, and if it exceeded the amount as sworn to, the Court could cancel the certificate, or order the person to take out a fresh certificate, and pay the prescribed fee.

Section 19 of the Act dealt with certain exemptions, and so far as it related to probates, etc., read as follows :—

Section 19. *Nothing contained in this Act shall render the following documents chargeable with any fee.*

Clause VIII. Probate of a will, letters of administration and certificate mentioned in the 1st Schedule to this Act annexed, No. 12, where the amount or value of the property in respect of

which the probate or letters or certificates shall be granted does not exceed one thousand rupees.

2. The next important Act we have to consider is Act XIII of 1875 which introduced Chapter III A. from sections 19A to 19G into the Court Fees Act of 1870 and as to this attention is directed to the notes to each of these sections in Chapter IV of this work.

3. As regards Articles Nos. 11 and 12 above referred to, these remained in force until the introduction of the Succession Certificate Act of 1889 (Act VII of 1889) and by section 13 of that Act fresh Articles were substituted into the Act of 1870.

Section 13 of Act VII of 1889 read as follows:—

13. (1) For Articles 11 and 12 of the 1st Schedule to the Court Fees Act, 1870, the following shall be substituted, namely:—

NUMBER.		PROPER FEE.
"11. Probate of a will or letters of administration with or without will annexed.	If the amount or value of the property in respect of which the grant or probate or letters is made exceeds one thousand rupees.	Two per centum on such amount or value, provided that when, after the grant of certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.

NUMBER.		PROPER FEE.
"12. Certificate under the Succession Certificate Act, 1889.	In any case.	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. NOTE.—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.
"12A. Certificate under the Regulation of the Bombay Code, No. VIII of 1827.	...	(1) As regards debts and securities, the same fee as would be payable in respect of a certificate, under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate as the case may be; and (2) As regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees."

(2) In the Court Fees Act, 1870, section 19, clause viii, for the words and figures " and certificate mentioned in the First Schedule to this Act annexed, No. 12," the words and figures " and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827 " shall be substituted.

It will be noted from above that the section also amended section 19 of the Court Fees Act of 1870, clause viii, as originally framed.

Up to this time there was nothing in any of the Acts which required an affidavit as to valuation of assets. This, however, was introduced by Act XI of 1899 and the form so introduced was inserted as Schedule III to the Court Fees Act of 1870.

The same Act also introduced further sections, *viz.*, from sections 91I to 19K. For the form of the affidavit so introduced, see page 73, etc., *post.*

For sections, see Chapter IV and notes to each section.

The introduction of the form of affidavit, and the aforesaid section, led to a complete change in the procedure as to payment of duty, etc.

The scale of duty, however, remained the same as it was under the Act of 1870 as originally framed, *viz.*, 2 per cent.

The next important amendment was introduced by Act VII of 1910, which embodied the sliding scale of duty, payable under Articles 11,

and 12A as framed by the Succession Certificate Act of 1889. By this Act the following was the scale fixed :—

	Duty per cent.
When the amount or value of the property exceeds Rs. 1,000, but does not exceed Rs. 10,000	2
Exceeds Rs. 10,000, but does not exceed Rs. 50,000	2½
Exceeds Rs. 50,000	3

(See Chapter II, page 55, *post* for details.)

Various questions have arisen as to the meaning of the words "*amount or value of the property.*" But it has now been settled (see cases hereafter referred to) that duty is payable on the net assets, and that it is on such net assets, that the scale provided is to be levied, and further, that if the net assets do not exceed Rs. 1,000 no duty is payable.

The above is shortly the history of the law of Estate Duty, as it at present exists, but for reasons herein given, it is submitted that the present law requires reconsideration, and that it would be better to have an entirely new Act, rather than have any further modifications, or amendments, introduced into the Act as it at present stands.

PART III.—EXISTING METHOD OF ASSESSING AND PAYMENT OF DUTY AND CERTAIN INCONVENIENCES ARISING THEREFROM.

Prior to the passing of Act XI of 1899, there was no uniformity of any description in regard

to the method of disclosing assets and liabilities; in fact, the latter were not even disclosed in the petition for a grant, and it was left to the parties to claim a refund on payment thereof under the provisions of section 19B *(see Notes under that section, page* 137, *post)*.

The aforesaid Act, introduced important changes, but the two most important were (1) that duty was to be prepaid, and (2) that an affidavit setting out assets and liabilities was to be filed in the form given in Schedule III.

The Government of India, as will be apparent from a perusal of the objects and reasons, and proceedings in Council, recognised, at perhaps a late stage, the lax procedure previously prevailing, and the advantage taken of the then existing state of the law upon the subject. An endeavour was made by the Act of 1899 to remedy these defects.

The Act of 1899, has on the face of it, the appearance of hurried legislation, and it is submitted that in framing the sections 19H to 19K the Legislature overlooked to a great extent the then existing sections, some of which, to my mind, are now really meaningless.

As regards the form of the affidavit of valuation, this in itself gives rise to various points for discussion, and which are more particularly dealt with, when discussing the details of the affidavit of valuation as at present embodied *(see Chapter III)*.

Matters have also been further complicated by the introduction of the sliding scale of duty introduced by Act VII of 1910.

In addition to the various points raised when discussing the affidavit, the following several points to my mind arise in connection with the present law.

POINT 1.—(*a*) *As to mode of valuation.*

It is stated in para. I of the form of affidavit, that the Annexure A. discloses all property and credits of which the deceased died possessed *at the time of his death.* This is quite definite, but the point is not left here as in para. III it is stated that the assets (exclusive of items set out in Annexure B., *i.e.*, debts, funeral expenses, etc.), but inclusive of all rents, interest, dividends and increased values since the date of death are under the value of *(here is inserted the net value).*

Then again attention is directed to the notes appearing under the following headings in Annexure A. :—

(*a*) Property in Government Securities, etc.
(*b*) Immovable Property.
(*c*) Leasehold Property.
(*d*) Property in Public Companies.
(*e*) Policy of Insurance, etc.

It will be noted that these notes speak of rents, interest, arrears, etc., *due to the time of making the application.*

The idea with regard to the valuation, being given as at time of making the application, and including interest and dividends up to such time, seems to have been borrowed from the procedure adopted in regard to probate duty under the Customs and Inland Revenue Act, 1881, 44 and 45 Vict. C. 12. Attention, however, is here drawn to the fact, that under that Act, the value and interest, etc., is required to be given *as at the date of the affidavit. (Vide forms in use in England, account No.* 1 *attached to form A. given in Appendix E hereto.)*

If, as a matter of fact, the idea was borrowed as above suggested, it would have been better had the paragraphs in the form of affidavit in India been differently worded, and more definite upon the point. As a matter of fact these paragraphs are silent as to date of valuation, and the Courts, and the public, have been left to place their own interpretation upon the words "at the time of making the application." There is nothing similar to para. III in any of the forms of affidavits as to Probate or Estate Duty in England.

(*b*) *As to headings in Annexure A of affidavit in India.*

The headings given in this Annexure are presumably based upon the headings set out in the affidavits in use in England under the Customs and Inland Revenue Act, 1881, and the Finance Act, 1894, and subsequent Finance Acts.

Generally speaking these affidavits contain separate accounts and schedules with regard to personal estate and real estate (equivalent of movables and immovables in India). The exceptions in this respect are in regard to small estates, that is, where the fixed duty of 30s. of 50s. is sought to be paid (*see form of affidavit in England for use in connection with small estates*).

In the forms dealing with small estates, the value of realty is brought under the same account.

It would, it is submitted, have been better had Annexure A to the Indian affidavit been divided into two parts, the first dealing with movables, and the second with regard to immovables, and separate columns given with regard to market value, assessment fees. Had this been done, it would have facilitated the checking of valuation, etc.

(*c*) *Annexure B.*

Here again, presumably, the forms in England were followed. Attention, however, is drawn to the fact that in England separate accounts or schedules are given in regard to debts payable out of personalty, funeral expenses, and debts payable out of realty (*see forms in use in England relating to Probate and Estate duty, vide also Appendix E hereto*).

It is also difficult to follow why the heading "*Property held in Trust, etc.*" was included in *Annexure B* (as to this see remarks under this

heading Chapter III, page 109, *post* and also notes to section 19D, page 150, *post*.

(*d*) *Generally.*

Whatever precedents, or law it was intended to follow, in regard to the method of valuation, it is difficult to understand why the Legislature at this date, bearing in mind that under the Finance Acts the value is taken *as at date of death*, should have made liable to duty, interest and income and increased value since the date of death.

Probate Duty, since the introduction of the Finance Act, 1894, is no longer payable on deaths occurring after the introduction of that Act (*see* Observation at page 23, *post*).

It is submitted that it would have been better to have followed the existing system in England, *that is*, to have given the valuation *as at date of death* (*vide* secs. 6 and 7, Finance Act, 1894). Provisions could have been made to avoid delay in applications, by inserting a section providing for payment of interest, either on the gross or net value, if the application were made after a certain time, and this time could have been fixed according to the place of death, that is to say, a lesser period where the death occurred in India, and a greater period, where the deaths occurred out of India.

So far as I can see, no valid objection could have been raised to such a procedure, it being borne in mind that in England interest is payable at 3 per cent. on personal estate from date of

death and on real property from the expiration of one year from the death (*see sec.* 18 (1) *Finance Act*, 1896 *and also sec.* 6 (8) *Finance Act*, 1894, *as to interest on instalments payable on realty*).

Then again, by fixing the date of death, as the period of valuation, it would have facilitated adjustment in England, on assets in India, and also facilitated the question of adjustment in India itself.

POINT 2.—*Scale of Duty.*

Prior to the introduction of Act VII of 1910 the duty was 2 per cent. irrespective of value. By this Act, as previously and hereafter shown, a sliding scale was introduced, that is, 2, 2½, 3 per cent., according to the value of the estate, estates under Rs. 1,000 in value being exempted.

Comparing this scale, with the scale in England, one at once sees that it is not by any means exorbitant. But in England the exemption only applies to estates where the gross value is under £100, and you have the fixed duty of £30 and £50 in cases of net value not exceeding £300 and £500 respectively.

It is curious to note in this connection that in regard to the power of granting certificates by the Administrators-General, this power extends only to those estates where the gross value of the assets situate in the Presidency does not exceed Rs. 1,000 in value, but this does not preclude the issue of more than one certificate as the Administrator-General concerned can only grant the

certificate in respect of assets situate within his own jurisdiction (*see sec.* 31, *Act III*, 1913).

It seems to me, that should the Government at any time introduce a new measure, in regard to estate duty, as is herein suggested, should be done; they would be justified in revising the scale of duty, and perhaps ranging same from 1 per cent. to 5 per cent. according to the value of the estate, and in fact there does not seem to be any valid reason why the scale should not be higher for the estates of a larger value as is the case in English law.

POINT 3.—*Inconveniences Arising.*

Owing to the manner in which the existing affidavit has been worded, and to the sliding scale of duty the following points arise :—

(*a*) Suppose "A" dies on 9th January leaving an estate possessing shares in Companies, which at the time of the death, are valued at Rs. 49,000, here the duty would be at 2½ per cent. The grant is not applied for till 10*th July*, and in the meantime dividends have been declared for the half-year ending June, which raises the value to over Rs. 50,000 duty then it becomes payable at 3 per cent. The same result may also arise from a rising market. Is it quite equitable that the percentage should be increased in the capital value merely because dividends have accrued since the death? These dividends, although, treated as capital, for the purpose of duty, really represent income of the estate, and might pass under the Will to a life-tenant or other beneficiary.

(*b*) The existing system leads to difficulty in adjusting duty. Inasmuch as duty is payable on income, etc., accrued up to time of application (*i.e., according to interpretation hereinbefore referred to up to time of swearing affidavit*) the applicant has, when adjusting duty, to bring into account the income, interest and dividends realised up to the date of grant—this is the only date that can be fixed with any accuracy as it is the date on which the order is made as contemplated by section 19 I—this date must be distinguished from date of issue, that being the date of the actual issue, *i.e.*, when it is signed by the proper official. For this purpose attention is directed to the form of grants of Probate and Administration as given in sections 254 and 255, Indian Succession Act, and sections 76 and 78, Probate and Administration Act. These sections only give forms of first grant, but in all grants, including limited grants, there is the date of the grant as also the date of issue.

Here it is also to be noted that no duty is payable, or adjustable on income, dividends, etc., accrued due and realised subsequent in date to the order for the grant, *i.e., date of grant*, as distinguished from *date of issue*.

(*c*) The existing system also leads to difficulty in adjustment of duty on movables situate in India, where the domicile of the deceased is in the United Kingdom, and where there has been a grant in that country. Under the Finance Acts, duty is payable on such assets

as valued *at time of death*, and income, etc., accrued up to that date is only included. Whereas in India the duty is calculated as previously stated.

The certificate of duty paid, does not distinguish between these dates, and merely shows the amount of duty paid, at the time of the order for a grant, which, in one sense, is not of much use in England for the purpose of adjustment; and the executor or administrator, out here, has to submit other proofs as to value at time of death, in order to help the executor, or administrator, in England.

So far as the Administrator-General is concerned, a special form of certificate has been adopted by that official in Bengal, in consultation with the Inland Revenue Authorities, and which certificate, when signed, is accepted by such authorities.

There are two further points which arise as follows :—

(*d*) No provision has been made, dealing with, what are known as contentious cases, and this may best be illustrated by examples.

(1) A dies leaving a Will appointing B executor who applies for probate and files the usual affidavit. "C" enters a caveat, before an order is made. The matter is set down as a contentious cause. During the proceedings an administrator *pendente lite* is appointed, and thereafter a grant is ordered to issue to B. Has he to file a further affidavit before grant issues?

(2) Case as above—no administrator *pendente lite* is appointed but a receiver is. The proceedings terminate in favour of B, and the receiver is discharged. Does B have to file a further affidavit, to bring in income accrued due and realised, by the receiver, up to the date of the order? If so, is he entitled to include costs incurred in the proceedings as a liability?

(3) Case as above. A caveat is entered before B applies. The proceedings terminate in favour of B, or against him, and a grant is ordered to issue to him, or to X as next of kin. Does the person in whose favour the proceedings terminate, have to bring in an affidavit, in which has to be included income accrued due up to date of order for the grant?

In dealing with above points it must be borne in mind that section 191 enacts that *no order* entitling the *petitioner* to a grant, shall be made, until he has filed in the Court an affidavit of valuation, and the Court is *satisfied that the duty has been paid*.

I do not know of any cases in which points, similar to above, have been raised, but they are points which arise, and it would be interesting to know how the section would be interpreted, under such circumstances.

(*e*) No provision has been made in the affidavit, where an application is made for a full grant, subsequent to the issue of a Succession Certificate, or the extension of such certificate.

The fees payable on certificate are governed by articles 12 and 12A, Schedule I. It is however provided in Article 11 that the fee payable on the grant shall be reduced by the amount of the fee paid, in respect of the certificate.

Nothing is said in the affidavit upon the point, but presumably the proper procedure would be, to include the full value of the asset in respect of which the certificate was granted in Annexure A, and then claim a deduction of the fee paid, on such certificate, in Annexure B, under the last heading.

(*f*) In concluding these remarks, I may mention that I have often been asked by private executors, and administrators, where the law in regard to estate duty in India is to be found, and when referred to the Court Fees Act, they expressed some surprise, expecting to be referred to some Act, dealing with Succession or Administration.

Suggestions as to amendments—

Having regard to above points, and also others touched upon, when dealing with the affidavit of valuation, and sections of the Act, it would, I submit, be to the benefit of the public generally, as well as to revenue officers, to have an entirely new Act dealing exclusively with Estate Duty, or Succession Duty, and in this Act could be included sections dealing with the following points amongst others.

1. Embodying a table of fees as to duty payable.

2. Provisions as to method of payment.

3. Provisions as to method of adjustment.

4. Provisions for the filing of provisional affidavits to avoid delay in the issue of grants.

5. Provisions dealing with payment of interest.

6. Provisions dealing with penalties.

7. Provisions dealing with joint properties or accounts (as in England).

8. Provisions, if deemed necessary, for duty on successions under trusts (as in England).

9. Provisions dealing with issue of certificates as to adjustment of duties.

10. The Act could also annex, by way of Schedules, various forms of affidavits to be followed as to valuation of assets, deduction of debts, adjustment of duty. These forms would introduce a uniformity of method, and should be of great service to Revenue Authorities, in seeing that proper duty had been paid and adjusted.

PART IV.—LAW RELATING TO LEGACY, SUCCESSION AND ESTATE DUTY IN ENGLAND.

The subject of death duties in England is, perhaps, one of the most complicated subjects that a legal practitioner has to deal with, and requires special study.

It is herein intended to refer, as briefly as possible, to the subject, and merely to give a broad outline thereof, with the object principally of affording a comparison with the law, as it exists in India.

The subject may perhaps be conveniently divided under the heads :—

A. Duty payable on deaths occurring *before* 2nd August, 1894.

B. Duty payable on deaths occurring on or after 2nd August, 1894.

C. Legacy and Succession duties.

POINT A.—*On deaths before 2nd August*, 1894.

Here we have three classes of duty : (1) *Probate Duty*, (2) *Account Duty*, and (3) *Temporary Estate Duty*.

(1) PROBATE DUTY.

This was originally a tax of 5 shillings upon any probate, or administration, above the value of £20.

By the Customs and Inland Revenue Act, 1881, 44 Vict. C. 12, a percentage, according to value, was imposed, and deduction of funeral expenses and debts, was allowed. Prior thereto, duty was payable on the *gross* value, and a return was allowed for debts paid, on production of vouchers, and an affidavit.

The Act also imposed the duty on all grants after 1st June, 1881, irrespective of date of death.

The duty was payable on the following :—

Property liable.

1. All personal property including leasehold, and this includes :—

(*a*) Partnership property which is treated as personalty.

(*b*) Realty directed to be sold, whether sold or not.

(*c*) Proceeds of realty contracted by deceased to be sold.

2. The following is not subject :—

(*a*) Realty (except as above).

(*b*) Property held by deceased as Trustee.

(*c*) Property situate out of United Kingdom and not capable of being dealt with in the United Kingdom.

(*d*) Estate *pur antre vie*.

Under the Act, accounting parties, had the option of paying a fixed duty of *30 shillings* where the whole personal estate did not exceed £300, without deduction of debts, or funeral expenses.

Debts.—The debts deductible, were debts owing from the deceased, and payable by law, out of the property comprised in the affidavit, but did not include—

(*a*) Voluntary debts, or debts payable under any instrument, not *bonâ fide* delivered to the donee *three* months before the death of the deceased.

(*b*) Debts, in respect of which, the real estate was primarily liable.

Mode of Valuation.

The value was to be taken *at the date of the affidavit* leading to the grant, and all accretions of income *from date of death to the affidavit were to be included.*

SCALE OF PROBATE DUTY.

(1) Estates not exceeding £100.	Nil.
(2) Estates exceeding £100 but not £500.	£1 for every £50 and fraction.
(3) Estates exceeding £500 but not £1,000.	£1-5 for every £50 and fraction.
(4) Estates exceeding £1,000.	£3 for every £100 and fraction.

The payment of the duty, exempts the property on which it is paid, from the Legacy and Succession duties, in cases of grants on and after 1st June, 1881.

Note.—Probate duty is only applicable where the deceased died on or before the 1st August, 1894.

By sec. 1, Finance Act, 1894, Estate duty has now taken the place of Probate Duty.

(2) B. ACCOUNT DUTY.

This duty was also imposed by the Act of 1881, and was created to defeat any attempt to avoid Probate Duty.

Property Liable.—Personal property including leaseholds, same as Probate Duty.

Scale.—Same as Probate Duty, but the fixed duty of 30s. not applicable.

Under the amendment made by 52 Vict. C. 7, the following property is liable, upon deaths occurring after 1st June, 1881.

(*a*) Death-bed gifts "*Donations mortis causa.*"

(*b*) Gifts not *bonâ fide* made 12 months before death.

(*c*) Gifts whenever made, of which donee does not assume possession, and retained against donor.

(*d*) Joint investments, whereby beneficial interest passes by survivorship.

(*e*) Property passing under voluntary settlement, whereby life, or other interests, determinable by reference to death, was reserved to settlor, or right is reserved by power to restore to himself, or reclaim absolute interest (*ante-nuptial settlements are not voluntary but post-nuptial are*).

(*f*) Nomination Policies, *i.e.*, kept up by deceased, for the benefit of a donee.

The duty is only payable in respect of voluntary settlements, made by persons dying on or after 1st June, 1881, and before 2nd August, 1894, and the Finance Act of 1894 deals with the subject.

(3) Temporary Estate Duty.

This was imposed by 52 Vict. C. 7 and is known as "Goschen's" Estate Duty.

It is an extra duty of £1 per cent. upon estates exceeding £10,000 and payable on all grants after *1st June, 1889*. The Act also imposed the duty on successions exceeding £10,000/- and the method of valuing same is also laid down (see sec. 6). By

sec. 7 it is declared the duty shall not be payable in respect of estates of persons dying on or after 1st June, 1896.

THE DUTIES ARE NOW SUPERSEDED BY ESTATE DUTY IMPOSED BY THE FINANCE ACT, 1894, AND THE ACT OF 1896 MAKES AN ALLOWANCE AGAINST ESTATE DUTY IN RESPECT OF ANY TEMPORARY DUTY PAID UPON THE SAME PROPERTY UNDER THE SAME WILL OR DISPOSITION.

POINT B.—*On deaths after 1st August*, 1894. Here there are two classes, *viz.*, (1) *Estate duty* and (2) *Settlement duty*.

(1) *Estate Duty*.

In dealing with this subject the student will have to master the following Acts:—

1. Finance Act. 1894,—57 and 58 Vict. C. 30.
2. Finance Act, 1896,—59 and 60 Vict. C. 28.
3. Finance Act, 1898,—61 and 62 Vict. C. 10.
4. Finance Act. 1900,—63 Vict. C. 7.
5. Revenue Act, 1903,—3 Edw. 7 C. 46.
6. Finance Act, 1907,—7 Edw. 7 C. 13.
7. Deceased Wife's Sister's Marriage Act, 1907,—7 Edw. 7 C. 47.
8. Finance Act, 1910,—10 Edw. 7 C. 8.
9. Finance Act, 1911,—1 and 2 Geo. 5 Ch. 48.
10. Finance Act, 1912,—2 and 3 Geo. Ch. 8.
11. Finance Act, 1914,—4 and 5 Geo. 5 Ch. 10.
12. Death Duties (killed in war) Act, 1914—4 and 5 Geo. 5 Ch. 76.

It is impossible here, to even attempt to deal with all these Acts, and it is merely intended to give a general, and broad outline, of the subject.

Estate duty, was imposed by the Act of 1894, and it is imposed on the principal value of *all property real or personal, settled or not settled*, passing on the death of any person dying after the 1*st August*, 1894.

The object, and general scheme of the Act, was apparently to include, not only, every case of property passing by death, but also every benefit accruing by death, even though the property, from which the benefit, is derived, does not itself pass (*see Attorney-General* v. *Wood*, 1897, 2 Q.B. 102). The first point one has to consider is as to the property liable to duty.

Property Liable.

Under sec. 1 of the Act of 1894, duty is chargeable on the *principal value of all property real or personal, settled, or not settled*, which passes upon death.

Turning to sec. 22 of the Act which includes definitions, we have *inter alia* the following :—

Property includes real and personal property, and the proceeds of sale thereof respectively, and any money, or investment for the time being representing the proceeds of sale.

Agricultural Property means agricultural land, pasture, and woodland, and also includes such cottages, farm buildings, farm houses and

mansion houses (together with the land occupied therewith) as are of a character, appropriate to the property.

Settled property, means property, comprised in a settlement.

Settlement, means any instrument whether relating to real property, or personal property, which is a settlement within the meaning of sec. 2, Settled Land Act, 1882, or, if it related to real property, would be a settlement within the meaning of that section, and includes a settlement effected by a parole trust.

Interest on expectancy, includes an estate in remainder, reversion, and every other future interest, whether vested, or contingent, but does not include, reversions expectant upon the determination of leases.

Incumbrances, includes mortgage, and terminable charges.

Property passing on death, includes property passing, either immediately on the death, or after any interval, either certainly or contingently, and either originally, or by way of substitution, limitation, and the expression "*On the death*" includes "*at a period ascertainable only by reference to the death.*"

Competent to dispose, A person is deemed competent to dispose of property, if he has such an estate, or interest therein, or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not.

General power, includes every power, or authority, enabling the donee, or other holder thereof, to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos*, or by will, or both, but exclusive of any power exercisable in a fiduciary capacity, under a disposition not made by himself, or exercisable as tenant for life under the Settled Land Act, 1882, or mortgagee.

It is also provided that

(*a*) A disposition taking effect out of the interest of the deceased person, shall be deemed to have been made by him whether the concurrence of any other person, was or was not, required.

(*b*) Money which a person has a general power to charge on property, shall be deemed to be property of which he has power to dispose.

Turning now to the Act the position would appear to be as follows :—

Sec. 2 declares "*property passing*" shall be deemed to include

(*a*) Property which the deceased was competent to dispose. (*Under this would be included property over which he had a general power whether exercised or not.*)

(*b*) Property in which the deceased, or any person had an interest ceasing on death, of the deceased, to the extent to which a benefit accrues or arises, by the cessation of such interest, but exclusive where the interest was only as holder of

an office or recipient of the benefits of a charity or as a Corporation Sole.

(*c*) Property which would be required on death to be included in an account under sec. 38, Customs and Revenue Act, 1881, as amended by sec. 11 of the Act of 1889, as if those sections related to real, as well as personal property, and the words "*voluntary*" or "*voluntarily*" and a reference to a volunteer were omitted therefrom.

(Under this all property which would have paid account duty, now pays estate duty, and it does not matter whether the dispositions are voluntary, or otherwise. Here it may also be noted that by sec. 59 of the Finance Act, 1910, in case of deaths on and after 30th April, 1909, gifts made *inter vivos* made within *three years* of the death are liable to duty, but it does not apply to gifts made prior to 30th April, 1918, or made for public or charitable purposes.)

(*d*) An annuity, or other interest, purchased, or provided by the deceased either by himself, or with another, to the extent of the beneficial interest accruing or arising by survivorship, or otherwise, on the death of the deceased.

(Under sec. 15 of the Act an annuity not exceeding £25 is exempt, but this only extends to one and if there be more it is first granted that this exempt.)

Aggregation.

The second point is as to *aggregation, i.e.*, lumping together of all properties, for purpose of arriving at duty payable.

Aggregation before the Act of 1900.

By sec. 4 of the Act of 1894, all property passing, is to be aggregated, so as to form one estate, and the duty is leviable at the proper scale on the principal value.

The following are not aggregated, and form separate estates :—

(*a*) Property in which the deceased had no interest (*sec.* 4).

(*b*) Property passing under a disposition not made by the deceased, on his death to some person other than his wife, or lineal ancestor, or descendant.

(*c*) The deceased's own free estate, if it does not exceed £1,000/- [*see sec.* 16 (3)].

(*d*) When the Treasury has remitted duty on picture, collections, etc., given for national or public purposes [*see sec.* 15 (2)].

(*e*) Pictures, prints, books, etc., of national or historic interest, and appearing to be so to the Treasury, passing on a death on or after 1st July, 1896, and settled to be enjoyed in succession. But they become liable if sold (*see sec.* 20, *Act of* 1896). This provision is further extended by sec. 63 of the Act of 1910 as to deaths on and after 30th April, 1909, to property settled, or not, and to property of artistic interest.

By sec. 7 (10) property passing on any death cannot be aggregated more than once, nor can duty be more than once levied on the same death.

By section 9 of the Act of 1912, growing timber on estates of persons dying after 29th April, 1909, is not taken into account, in estimating the principal value, but are payable on sale when felled or cut.

(2) *After the Act of* 1900 *and before the Act of* 1907.

Section 12 of this Act amended Act 4 of the Finance Act, 1894, and under this section it does not matter to whom the property passed on death. The second exception, above referred to, has no effect on cases after this Act.

As regards settled property, section 12 (2) in effect says, where such property passes on the death of a person on or before 1st August, 1894, and such property would have been liable to estate duty, the aggregation shall not operate to enhance the rate of duty payable, either upon the settled property, or any other property so passing, by more than ½ per cent. in excess of the rate at which duty would have been payable, if such settled property had been treated as an estate by itself.

(3) *After the Act of* 1907.

By section 16 of the Act, in the case of persons dying on and after 19th April, 1907, any settled property which would under sub-section 12 of the Act, 1900, be aggregated with other property, so as to enhance the rate of duty, to the limited extent, provided in that section, shall for the purposes of the principal Act, instead of being so aggregated, be treated as an estate by itself.

The third point is as to *Exemptions.*

On a perusal of the Acts, it will be seen that the following are exempted :—

(*a*) Property situate outside the United Kingdom, unless they were liable to Legacy, or Succession Duty.

This means

(1) that immovable property would not be liable, as it would not be liable to Legacy or Succession Duty,

(2) movables if the deceased had his domicile *out* of the United Kingdom [*see sec.* 2 (2) *Act*, 1894].

(*b*) Trust Property, *i.e.*,

Property of which the deceased was Trustee, but

(1) The disposition must not be made by the deceased.

(2) If made by him, it must have been made *twelve months* before his death, and possession assumed upon the creation of the trust, and retained to the exclusion of the deceased, or any benefit to him, by contract or otherwise. [*See sec.* 2 (3), *Act* 1894].

(*c*) Property passing by reason of a *bonâ fide* purchase, from the person under whose disposition the property passes. Also the falling in of leases, or annuities for lives, where there was a *bonâ fide* purchase, and if it was for partial consideration

in money or moneys worth the value thereof is to be allowed as a deduction against the value of the property for the purpose of estate duty (see sec. 3, Act 1894).

(*d*) Settled property, if estate duty has already been paid, since the date of the settlement, is not liable until the death of a person, at any time competent to dispose thereof (see sec. 5 (2), Act of 1894).

By sec. 13, Act 1898, an amendment was introduced to the effect that persons not *sui juris* were not to be deemed competent to dispose.

Sec. 55 of the Act 1910, introduced limitations as to relief from estate duty, in respect of settled property.

Sec. 14 of the Act 1914 in effect states, that any relief given by sec. 5, sub-sec. 2, etc., shall cease, in case of any person dying after 15th August, 1914, except where the previous duty was paid, upon the death of one of the parties to a marriage, so far as respects the payment of duty on the death of the other party to the marriage (see sec. 14 and proviso 1 of Act 1914).

(*e*) In the case of settled property, when the interest of any person under the settlement fails, or determines, by reason of his death, before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death (sec. 5 (3), Act 1894).

(*f*) Property of common seamen, soldiers, mariners who die in His Majesty's service (sec. 8 (1), Act 1894).

By sec. 14 of the Act of 1900 power is given to remit duties in cases of persons killed in war since 11th October, 1899 up to £150/- where their property passes to widows, or lineal descendants, and does not exceed £5,000. (This was due to the South African War.)

The above power is further extended by the Act of 1914 (Death Duties Killed in War Act) where the property passes to the widow, lineal descendants or ancestors, and the remission allowed thereby is—

1. Where the value does not exceed £5,000 the whole of the duty.

2. Where the value exceeds £5,000/- in respect of the first £5,000/- the whole, and

3. So much of the duties leviable in respect of the remainder, as exceed the sum which if accumulated at compound interest at 3 per cent. from the date of death, with half-yearly rests would at the expiration of the period of the normal expectation of life of a person of the age of the deceased, at the time of death (calculated in accordance with the table of mortality of Government Life Annuitants, 1912) amount to the whole of the duties leviable.

(See also further provisions regarding the benefits of the relief given and remission in respect

of property passing more than once owing to deaths caused by the war).

(*g*) A single annuity not exceeding £25 purchased by the deceased, or by arrangement with another, and if there is more than one, the first is only exempt (sec. 15 (1), Act 1894).

(*h*) Power is given to the Treasury to remit upon pictures, books, etc., of national, scientific, or historic interest, given for national purposes (sec. 15 (2), Act 1894); and the same power is given in regard to such articles, when enjoyed in kind, by a person not competent to dispose, but it attaches when they are sold, or pass to a person competent to dispose (sec. 20 (1), Act 1896). By sec. 63 Act 1910 exemption extends to legacy, and succession duty, on property of artistic value as to deaths on and after 30th April, 1909.

(*i*) Pensions or annuities payable by Government of India to widow or child of deceased officer (15 (3), Act 1894).

(*j*) Advowsons and Church Patronage (15 (4), Act 1894).

(*k*) Personal property settled by will, or disposition, made by person dying before 2nd August, 1894, in respect of which probate, inventory (*i.e.*, Scotch Probate Duty) or account duty, has been paid, or is payable, unless in either case the deceased was at the time of his death or at any time since the will or disposition took effect had been competent to dispose of the property. (Sec. 21 (1), Act 1894.)

By sec. 14 of the Act 1914, this relief ceases in cases of deaths after 15th August, 1914, except as therein provided and see also sec. 55 of the Act of 1910.

(1) By sec. 21 (3), Act 1894, where an interest in expectancy, has before 2nd August, 1894, been *bonâ fide* sold, or mortgaged, for full consideration in money, or money's worth, then no other duty is payable by the purchaser or mortgagee, when the interest falls into possession, than would be payable if the Act of 1894 had not been passed.

(*m*) By sec. 21 (5) where a husband or wife is entitled either, solely or jointly with the other, to income of any property settled by the other, under a disposition which took effect before the passing of the Act (*i.e.*, 2nd August, 1894) and on his or her death, the survivor becomes entitled to the income of the property settled by such survivor, estate duty is not payable in respect of that property until the death of the survivor.

(*n*) By sec. 14 of the Act of 1896, where a settlor, who is tenant for life, during his life acquires by death, of a subsequent limited owner, under the settlement, the reversion, or an absolute power to dispose, the property shall not deem to pass on death, and no duty is payable.

(*o*) By sec. 15 of the Act of 1896, duty is not payable, where property reverts to a settlor under the circumstances therein stated.

(*p*) By sec. 15 (4) of the Act of 1896, duty is not payable where the deceased was entitled by law

to the rents and profits of real property of his wife and by his death, after the Act, *i.e.*, 1st July, 1896, she becomes entitled in virtue of her former interest.

(This would arise in cases of marriage before the Married Women's Property Act, 1882.)

(*q*) All estates not exceeding £100 (sec. 17, Act 1894).

(*r*) *Bonâ fide* surrender of life interests, more than 12 months before death (*if the* Act *of* 1900 *applies; see* sec. 11 (1) Act 1900 *and* sec. 59, Act *of* 1910).

(*s*) Timber, unless, and until sold (*sec.* 9, *Act* 1912).

(*t*) Interest as holder of an office, recipient of benefit of charity, or Corporation Sole (sec. 2 (1), Act 1894).

(*u*) Wedding presents, gifts, part of deceased's normal expenditure and gifts not exceeding £100 (*see* sec. 59 (2), Act 1910).

The fourth point is as to *Collection, Recovery and Valuation*. As we have previously seen, the duty is leviable on the principal value of the property passing.

Sec. 6 deals with the collection and recovery of estate duty and speaks of the affidavit, etc.

1. Duty is payable on delivery of an inland revenue affidavit or account, or on expiration of 6 months from date of death, whichever event first happens.

2. Duty not originally paid, is payable on account, setting out particulars, and delivered 6 months after the death, or within such further time as might be allowed.

3. The estate is to include income, and outstandings, *at the time of death.*

4. Simple interest at 3 per cent. is to be paid from date of death, up to date of delivery of affidavit, or account, or the expiration of 6 months from date of death whichever event first happens.

Sec. 7 (5) declares, the principal value shall be estimated to be the price, which in the opinion of the Commissioners, such property would fetch if sold in the open market, at the time of the *deceased's death.*

This, however, was amended by the Act of 1910, and by sec. 60 (2) it is provided, that in cases of death after 30th April, 1910, the Commissioners shall fix the price, according to the market value at the time of death, and shall not make any reduction in the estimate, on account of same being made, on the assumption that the whole property is to be placed on the market at one, and the same time; provided that where it is proved that the value has been depreciated by reason of the death, the Commissioners in fixing the price, shall take such depreciation into account.

Special provisions are made as to value of certain classes of property, see following :—

1. Agricultural property—Sec. 7 (5), Act 1894, secs. 60 and 61, Act 1910 and sec. 18, Act 1911.

2. Interest in expectancy—Sec. 7 (6), Act 1894 and also sec. 16, Act 1914.

3. Valuation of cessation of interest—Sec. 7 (7), Act 1894.

4. Crown entails—5 (5), Act 1894.

5. Special provisions as to certain classes of property—Secs. 60, 61, Act 1910.

6. Timber—Sec. 9, Act 1912.

Deductions allowed.

The following are allowed :—

1. Reasonable funeral expenses.

2. Debts and incumbrances created, or incurred *bonâ fide*, for full consideration in money or moneys worth, wholly for deceased's own use (*but see sec.* 57, *Act* 1910, *as to debts incurred for purchase of any interest in expectancy*).

3. Debts incurred as surety, but only where reimbursement cannot be obtained.

4. Foreign debts, where contracted to be paid in the United Kingdom, or charged on property situate therein.

Other foreign debts are firstly to be paid out of the foreign property, but if this is not sufficient, then deduction can be allowed.

5. Additional expenses for realising, or administering foreign property can be allowed, but it is limited to 5 per cent. of the value of such property.

6. Foreign death duties, payable on foreign properties, are allowable as a deduction against the value thereof.

(*For details of above see* sec. 7, Act 1894).

7. Under sec. 62, Act 1910, deduction of amount paid for increment duty is allowable, as if it were a debt.

Effect of Payment.

The fifth point is as to the effect of payment of duty.

1. By sec. 1 of the Act of 1894 it is provided that in cases of persons dying after the commencement of the Act, *i.e.*, 2nd August, 1894, the fees payable were to be on the scale thereafter referred to (*see Table of Scale hereafter*) and the duties, mentioned in the 1st Schedule, were not to be levied in respect of the property chargeable with estate duty.

The Schedule referred to deals with—

1. Duties imposed by the Act of 1881 (*Probate Duty*).

2. Duties imposed by the Act of 1881 as amended by the Act of 1889. } Account Duty.

3. The additional succession duties imposed by the Act of 1888. } The High Rate Succession Duty.

4. Duties imposed by the Act of 1881. } Temporary Estate Duties.

5. The 1 per cent. legacy or succession duty, which would have been payable under deceased's will or intestacy, or his disposition, or any devolution from him, under which estate duty has

been paid, or under any other disposition under which estate duty has been paid (*see sec.* 58, *Act* 1910, *and sec.* 13, *Act of* 1914).

It will be seen from above, that on deaths after 1st August, 1894, probate duty, account duty, and temporary estate duty, are superseded, and the higher rate succession duty is exempted.

The "higher rates" referred to, were payable in respect of property which had not paid probate, or account duty, on deaths on and after 1st July, 1888 (*see sec.* 51 *and* 52, *Vic. c.* 8).

Where the gross value is over £100/- and under £300/- a fixed duty of 30s. may be paid, and where the value exceeds £300/- but not £500/- a fixed duty of 50s., but if it afterwards exceeds £500/-, the ordinary fee is payable (*see secs.* 16 (1), 16 (3), *Act* 1894).

The 6th point is as to the

Scale of Estate Duty.

(1) *Under the Act of* 1894 (*sec.* 17).

Principal Value.		Rate per cent.
£100	... ...	Nil.
Over £100 but not over	£500 ...	1 per cent.
500 ,, ,, ,,	1,000 ...	2 ,, ,,
1,000 ,, ,, ,,	10,000 ...	3 ,, ,,
10,000 ,, ,, ,,	25,000 ...	4 ,, ,,
25,000 ,, ,, ,,	50,000 ...	4½ ,, ,,
50,000 ,, ,, ,,	75,000 ...	5 ,, ,,
75,000 ,, ,, ,,	100,000 ...	5½ ,, ,,
100,000 ,, ,, ,,	150,000 ...	6 ,, ,,
150,000 ,, ,, ,,	250,000 ...	6½ ,, ,,
250,000 ,, ,, ,,	500,000 ...	7 ,, ,,
500,000 ,, ,, ,,	1,000,000 ...	7½ ,, ,,
1,000,000	...	8 ,, ,,

(2) *Under Act 1907, sec. 12, on persons dying after 19th April, 1907.*

Principal Value.		Rate per cent.
From £100 to £150,000		Same as to No. 1
Over £150,000 but not over	£250,000	7 per cent.
250,000 ,, ,, ,,	500,000	8 ,, ,,
500,000 ,, ,, ,,	750,000	9 ,, ,,
750,000 ,, ,,	1,000,000	10 ,, ,,
1,000,000 ,, ,, ,,	1,500,000	10 p. c. on million and 11 p. c. on remainder.
1,500,000 ,, ,, ,,	2,000,000	10 p. c. on do. and 12 p. c. remainder.
2,000,000 ,, ,, ,,	2,500,000	10 p. c. on do and 13 p. c. do.
2,500,000 ,, ,, ,,	3,000,000	10 p. c. do. and 14 p. c. do.
3,000,000		10 p. c. do. and 15 p. c. do.

(3) *By sec. 54, Act 1910, persons dying on and after 30th April, 1909.*

Principal Value.		Rate per cent.
Over £100 but not over	£500 ...	1 per cent.
500 ,, ,, ,,	1,000 ...	2 ,, ,,
1,000 ,, ,, ,,	5,000 ...	3 ,, ,,
5,000 ,, ,, ,,	10,000 ...	4 ,, ,,
10,000 ,, ,, ,,	20,000 ...	5 ,, ,,
20,000 ,, ,, ,,	40,000 ...	6 ,, ,,
40,000 ,, ,, ,,	70,000 ...	7 ,, ,,
70,000 ,, ,, ,,	100,000 ...	8 ,, ,,
100,000 ,, ,, ,,	150,000 ...	9 ,, ,,
150,000 ,, ,, ,,	200,000 ...	10 ,, ,,
200,000 ,, ,, ,,	400,000 ...	11 ,, ,,
400,000 ,, ,, ,,	600,000 ...	12 ,, ,,
600,000 ,, ,, ,,	800,000 ...	13 ,, ,,
800,000 ,, ,, ,,	1,000,000 ...	14 ,, ,,
1,000,000	...	15 ,, ,,

(4) *By sec. 12 of Act 1914 persons dying after 15th August, 1914.*

Principal Value.				Rate per cent.
From £.100 to £.40,000.				Same as No. 3
Over £.40,000	but not over		£.60,000	7 per cent.
60,000	,,	,,	80,000	8 ,, ,,
80,000	,,	,,	100,000	9 ,, ,,
100,000	,,	,,	150,000	10 ,, ,,
150,000	,,	,,	200,000	11 ,, ,,
200,000	,,	,,	250,000	12 ,, ,,
250,000	,,	,,	300,000	13 ,, ,,
300,000	,,	,,	350,000	14 ,, ,,
350,000	,,	,,	400,000	15 ,, ,,
400,000	,,	,,	500,000	16 ,, ,,
500,000	,,	,,	600,000	17 ,, ,,
600,000	,,	,,	800,000	18 ,, ,,
800,000	,,	,,	1,000,000	19 ,, ,,
1,000,000				20 ,, ,,

Notes as to Duty.

1. Duty is now payable on the actual value.

2. Interest is payable at 3 per cent. in respect of personal property from date of death, and on realty from 1 year from death (*sec.* 18 (1), *Act* 1896).

3. Power is given to accept part of real (including leasehold) property in satisfaction of estate, settlement, or succession duty (*sec.* 56, *Act* 1910).

4. Duty on growing timber is payable on sale, and interest at 3 per cent. is chargeable from date of receipt of sale proceeds (*sec.* 9, *Act* 1912).

5. Provision is made for payment by instalments on realty (*sec.* 61 (3 *and* 4), *Act* 1910).

6. Provision is made for payment by instalments on annuities (*sec.* 16, *Act* 1896).

7. Income-tax upon interest is not allowed (*sec.* 18 (1), *Act* 1896).

8. Deduction of duty, paid on property in a British possession, is allowed where sec. 20 of the Act of 1894 is applicable.

(*This section has been applied to India.*)

9. Under sec. 15, Act 1914, power is given to allow reduction from 10 to 50 per cent. upon property consisting of land, or a business, which has paid duty, and again becomes liable within 5 years.

10. The Executor, or Administrator, is accountable for duty on all personal property, and may pay the duty on other property in his control (*secs.* 6 (2), 8 (3), *and* 22 (1), *Act* 1894).

11. If Executor or Administrator is not accountable, then the person to whom the property passes is accountable (*sec.* 8 (4), *Act* 1894).

12. As to objects of national interest, etc., which are exempted, under certain circumstances, if sold, etc., the person selling or becoming competent to dispose of them is accountable (*sec.* 20 (2), *Act* 1896).

Settlement Estate Duty.

This duty was imposed by sec. 5, Act 1894, and is payable on deaths after 1st August, 1894, but, it is now no longer payable, in case of deaths *after* 11th May, 1914, as this was abolished by sec. 14 of the Act of 1914.

It was a duty of 1 per cent. and which was increased to 2 per cent. as to deaths after 30th April, 1909, by the Act of 1910 and was and is payable (on deaths after 1st August, 1894, and 11th May, 1914) on property, in respect of which estate duty is payable, and attaches to property settled by will, or other disposition, and passing thereunder on death or to some person not competent to dispose (*see sec.* 5 (1), *Act* 1894).

For definitions of "Settled Property," Settlement, "Competent to dispose," *see definitions page* 26 *et seq. ante.*

For exemptions, *see Exemptions under Estate Duty and also secs.* 5 (1) *and* (5), *Act* 1894; 16 (3), *Act* 1894; 21 (1), (4), *Act* 1894; 14, *Act* 1898 (*as to return in certain cases*); 14, *Act* 1914.

Legacy Duty.

This duty is now principally governed by 36 Geo. III.

The term "Legacy" was defined by sec. 7, but this definition was superseded by 8 and 9 Vict., c. 76, sec. 4, and it is therein declared that—

(1) Legacy, includes gifts by will, or testamentary disposition, payable out of personal estate, of any person, or out of any personal estate of which such person has power to dispose, or payable out of, or charged upon, his real estate, or out of real estate, of which he has power to charge, or out of moneys to arise from sale, or mortgage of any such real estate.

(2) Death-bed gifts or *donations mortis causa*.

(*a*) It will be noted, that under the definition, would be included property appointed under a general power.

(*b*) The legacy duty, becomes payable upon satisfaction, payment, appropriation or retention by the executor or administrator (*sec.* 6).

(*c*) If the domicile of the deceased be in a foreign country, or abroad, no duty is payable, but it is payable where the domicile is in the United Kingdom.

(*d*) The duty is cumulative, *i.e.*, it is payable under the will, or intestacy of every person, through whose estate the property passes.

(*e*) The Act, in various sections, deals with the mode of calculation on bequests of various nature, and attention is directed to the following :—

1. On Annuities, *see sec.* 8.

2. Legacies given to purchase annuities, *see sec.* 10.

3. Legacies whose value can only be ascertained from time to time, *sec.* 11.

4. Legacies in succession to different persons, *sec.* 12.

5. Legacies of furniture, etc., to be enjoyed in kind, *sec.* 14.

6. Legacies to joint tenants, *sec.* 16.

7. Contingent legacies, *sec.* 17.

8. Legacies subject to powers, *sec.* 18.

9. Moneys directed to be applied in purchase of realty, *sec.* 19.

10. Money left to pay duty, *sec.* 21.

11. Legacies charged upon, or payable, out of realty, or proceeds of sale thereof, are chargeable with succession duty and not legacy duty, *see sec.* 21 (2), *Custom and Inland Revenue Act*, 1888.

12. As to relief in certain cases of small estates, *sec.* 13, *Act* 1914.

(*f*) As to Exemption from Legacy Duty.

1. Property passing to the husband or wife.

Here it may be noted that by the Finance Act, 1910, sec. 58, the 1 per cent. duty was re-imposed, and made payable where the legatee is the husband, or wife of the testator, intestate or predecessor, as in cases where the person taking is a lineal ancestor or descendant of the testator, intestate or predecessor.

But it is provided the duty shall not be levied in cases enumerated in clauses *a, b and c. of the said section.*

2. Property passing to lineal descendants or ancestors (or husbands and wives of such) where—

(1) Estate duty has been paid (*sec.* 1, *Act* 1894).

(2) Probate or account duty has been paid (41, *Customs and Inland Revenue Act*, 1881).

(3) Where the fixed duty of 30s. has been paid (36, *Act* 1881).

(4) Where the nett unsettled estate, does not exceed £1,000 and estate duty has been paid (*sec.* 16 (1), *Act* 1894).

(5) Where the domicile of the deceased was abroad.

(6) Where the value of the personal estate is under £100, and the deceased died after 24th March, 1880, 43 Vict., c. 14, sec. 13.

(7) Specific legacies, under value of £20, but if more than one legacy which together amount to £20 then each is liable. 55 *Geo. III c.* 184 *sch. Pt. III.*

Scale of Legacy Duty.

The scale of legacy duty varies, according to relationship, and their rates are governed by 55 Geo. III c. 184 and the Finance Act, 1910, as to deaths after 29th April, 1909, *see sec.* 58.

Relationship.	Percentage before Act 1910.	Percentage after Act 1910.
1. Husband or wife of deceased.	Nil.	1 per cent. in cases referred to in sec. 58.
2. Lineal ancestors and descendants on their wives or husbands.	1 per cent. but see exemptions.	
3. Brothers and sisters or their descendants, or husbands and wives of any such.	3 per cent.	5 per cent.

Relationship.	Percentage before Act, 1910.	Percentage after Act, 1910.
4. Brothers and sisters of the father or mother of the deceased or their descendants, or husbands or wives of any such.	5 per cent.	10 per cent.
5. Brothers and sisters of the grand-father or grand-mother of the deceased or their descendants or husbands or wives of any such.	6 ,, ,,	10 ,, ,,
6. Persons in any other degree of collateral consanguinity to the deceased or strangers in blood.	10 ,, ,,	10 ,, ,,

Succession Duty.

This duty was introduced by the Succession Duty Act, 1853, 16 *and* 17 *Vict. c.* 51.

It is declared by sec. 2, that every description of property, by reason whereof any person becomes beneficially entitled to any property, or the income, upon death of any person, after 19th May, 1853, *i.e., commencement of the Act*, and every devolution by law of any beneficial interest in property, or the income, upon the death of any person dying as aforesaid, to any other person shall be deemed to confer, on the person becoming entitled as aforesaid a "Succession," and duty is payable thereon at the rates mentioned according to the relationship between the "successor" and the

"predecessor," the former being the person entitled, and the latter, the person from whom the interest is derived.

Property liable.—The following is liable :—

(1) Real property, (2) Leasehold property.—Situate in United Kingdom, and passing under a Will, or other disposition or intestacy.

(3) Personal property not liable to legacy duty.—Passing under disposition other than a Will or intestacy.

1. The Act makes special provisions in regard to various matters to avoid evasions of the duty, etc., and attention is directed to the following :—

(*a*) Provisions as to joint tenancies—*sec. 3.*

(*b*) Relating to powers of appointment—*sec. 4.*

(*c*) Terminable charges—*sec. 5.*

(*d*) As to dispositions, accompanied by reversion of any benefit to the grantor, or other persons for life, or any period ascertainable by reference to death, are to be deemed a succession —*sec. 7.*

(*e*) Disposition to take effect, at a period ascertainable by reference to death of any person, and secret trusts, are to be deemed to confer succession—*sec. 8.*

(*f*) As to changes in relationship of a succession.

As to personal property—*sec. 14.*

As to realty—*sec. 15.*

(*g*) As to conflict of duties, where legacy and succession duty payable, the former only is payable —*sec. 18.*

2. The duty is paid, on the successor becoming entitled in possession, or to receipt of the income and profits; where there are outstanding interests, on termination thereof—*sec.* 20.

3. As to rate of duty, this was first governed by secs. 10 and 11. They were amended by—

(1)	Customs and Inland Revenue Act,		1881.
(2)	Do.	do.	1888.
(3)	Finance Act		1894.
(4)	Do.		1910.

(*See table of scale hereafter.*)

4. As regards valuation of property, attention is directed to the following :—

(*a*) On Real and Leasehold Property before Finance Act, 1894—*Secs.* 21, 22, *Succession Duty Act. Sec.* 22, *Act of 1888.*

In effect, these provide for the successors' interest to be treated as an annuity equal to the annual value of the property payable for the rest of his life, or for such less period, as he shall be entitled—provision being made for payment by instalments.

(*b*) After Finance Act, 1894.

(1) Where successor not competent to dispose —As above.

(2) Where competent to dispose—*On principal value determined as provided by sec.* 7(5).

Deduction allowed for estate duty, but none on account leaseholds, unless especially charged. The duty is payable in the same way as estate duty on real property.

(*c*) Personal property—*see sec.* 32, *Succession Duty Act* (including leaseholds) value to be by reference to Legacy Duty Act.

Exemptions from duty.

The following are exempted :—

(1) Property passing to husband, or wife of predecessor (*here the provisions of sec.* 58, *Act* 1910, *must be borne in mind*).

(2) Property passing to lineal ancestors, or descendants of predecessor.

1. Where estate duty has been paid (*sec* 1, *Act* 1894).
2. Where probate or account duty has been paid under Act 1881—only applicable to personal as realty does not pay this duty (*sec.* 41, *Act* 1881).

(3) Where the value does not amount to £100/- (*sec.* 18, *S. Duty Act*, 1853).

(4) Where fixed probate duty of 30/- has been paid (36, *Act* 1881).

(5) Where net estate does not exceed £1,000/-, and estate duty has been paid (16 (3), *Act* 1894).

(6) Where successor is the settlor (12, *S. Duty Act*, 1853).

(7) Property of foreigners depends on domicile, or settlement.—See note on Legacy Duty.

(8) Church patronages, but become liable when sold.—24, S. Duty Act, 1853.

(9) Scientific, national objects, etc., but become liable when sold.—15 (2), Act 1894; 20 (1), Act 1896.

(10) Timber until sold.—61 (5), Act 1910; 19, Act 1911; 9, Act 1912.

Table of Succession Duty under Act 1853, *Act* 1881, *Act* 1888, *Act* 1894, *Act* 1910.

Relationship of Successor to predecessor.	Before 1st July, 1888.	After 1st July, 1888, and before 2nd August, 1894.	After 1st August, 1894, and Estate duty has been paid.	After 30th April, 1909, and Estate duty has been paid.
Husband or wife	Nil.	Nil.	Nil.	
2. Lineal ancestor or issue or their husbands and wives.	1 per cent. not payable where probate duty or account duty paid. See also exemptions where fixed duty paid and where net does not exceed £1,000.	1½ p.c.	Nil.	1 per cent. in certain cases see sec. 58. Act 1910.
3. Brothers or sisters and their descendants or their husbands and wives.	3 p.c.	4½ p.c.	3 p.c.	5 p.c.
4. Brothers or sisters of the father or mother and their descendants or their husbands and wives.	5 p.c.	6½ p.c.	5 p.c.	10 p.c.

Relationship of Successor to predecessor.	Before 1st July, 1888.	After 1st July, 1888, and before 2nd August, 1894.	After 1st August, 1894, and Estate duty has been paid.	After 30th April, 1909, and Estate duty has been paid.
5. Brothers or sisters of the grandfather or grandmother and their descendants or their husbands and wives.	6 p.c.	7½ p.c.	6 p.c.	10 p.c.
6. Persons of more remote consanguinity or strangers in blood or their husbands and wives.	10 p.c.	11½ p.c.	10 p.c.	10 p.c.

CHAPTER II.

Relating to Estate duty, mode of payment, Scale of duty in India.

As pointed out in the previous chapter, (Part II) the law relating to estate, or probate, and administration duty, in India, is embodied in Chapter IIIA of the Court Fees Act and which chapter from secs. 19A to 19G was inserted by Act III, 1875. To these sections have been added other sections, and the affidavit of valuation in Schedule III has been included. This piecemeal form of legislation, has led to inconvenience, and also to references under sec. 5 of the Act.

Before passing to a consideration, of the provisions of the various sections of the Act, which in any way whatsoever touch upon the subject, and

which are dealt with in the next chapter, it is proposed herein to deal with—

Part I, Scale of duty,

Part II, Procedure as to payment.

PART I.

Scale of Duty.

The scale of duty is regulated by Article II, Schedule I, of the Act, as amended by Act VII of 1910, and that article is as follows :—

Number of Article.		Amount of duty payable.
11. Probate of a Will or Letters of Administration with or without Will annexed.	(a) When the amount or value of the property in respect of which the grant of probate or Letters is made exceeds **one thousand rupees** but does not exceed **ten thousand rupees.**	Two per centum on such amount or value.
	(b) When such amount or value exceeds **ten thousand rupees** but does not exceed **fifty thousand rupees.**	Two and one half per centum on such amount or value.
	(c) Where such amount or value **exceeds fifty thousand rupees.**	Three per centum on such amount or value.
	Provided that when after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code No. VIII of 1827 in respect of any property included in an estate, a grant of probate or Letters of Administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	

Summary—

To summarise the above article it comes to this:

(*a*) If the assets exceed in value Rs. 1,000/- but do not exceed Rs. 10,000/-, the fee is = 2 per cent.

(*b*) If they exceed Rs. 10,000/- but not Rs. 50,000/-, the fee is = $2\frac{1}{2}$ per cent.

(*c*) If they exceed Rs. 50,000, the fee is = 3 per cent.

Succession Certificate—

As regards the proviso the duty payable on a succession certificate is governed by article 12 and 12A, Schedule I, which is as follows :—

Art. 12.	Certificate in any case under Succession Certificate Act.	**Two per cent.** (2 p.c.) on the amount or value of any debt or security specified under sec. 8 of the Act and **Three per cent.** (3 p.c.) on the amount or value of any debt or security to which the certificate is extended under sec. 10 of the Act.

Note (1) *The amount of a debt is its amount including interest on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained.*

(2) *Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such power has been conferred, whether the power is for receiving of interest or dividends on or for the negotiation or transfer of the security or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the*

certificate is applied for, so far as such value can be ascertained.

12A. Certificate under the Regulation of the Bombay Code No. VIII of 1827.	(1) As regards debts and securities.	The same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such certificate as the case may be.
	(2) As regards other property in respect of which the Certificate is granted.	
	(*a*) Where the amount or value of such property exceeds one thousand rupees but does not exceed ten thousand rupees.	Two per centum on such amount or value.
	(*b*) When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees.	Two and one half per centum on such amount or value.
	(*c*) When such amount or value exceeds fifty thousand rupees.	Three per centum on such amount or value.

Notes on above—

i. It may be noted that the scale of duty payable is very much lower than the scale provided for as to Estate Duty in England (*vide* tables at pages 41—43 *ante*). It seems to me that no valid

objection could be raised in raising the present scale of duty in India.

ii. As regards the proviso to Article 11, see remarks appearing at page 5 *ante*.

iii. Regarding the value of estate under Rs. 1,000/- in value, attention is directed to sec. 19 and clause VIII thereof, which is as follows :—

Sec. 19.—*Nothing contained in this Act shall render the following documents chargeable with any fee.*

Clause VIII.—Probate of a Will, Letters of Administration (and save as regards debts and securities a certificate under Bombay Regulations VIII of 1827) *where the amount or value of the property in respect of which the probate or letters exceed one thousand rupees.*

(*See also cases hereafter referred to.*)

iv. The following points also arise in connection with the wording of clauses 1 and 2 of Article No. II, and on which there have been various decisions.

(*a*) *Probate of a Will or Letters of Administration.*—There is no defining clause in the Act, and the General Clauses Act of 1897 would not, it is submitted, be applicable, as the wording of column 1 was in the Act, before the passing of the aforesaid General Clauses Act.

Sec. 19 (i) also speaks of Probate, or Letters of Administration. The wording of the column and the section being general, it would include any

nature of grant, entitling an executor or administrator to deal with an estate, *e.g.*, a grant *pendente lite, ad colligenda, limited until a Will be proved, limited during minority, etc.* In all these cases, it is submitted, that the duty would have to be paid before the grant could issue.

(*b*) *Meaning of the words "The amount or value of the property"* appearing in column 2 and in sec. 19.

These words appear in sec. 19 and in column 2 of Art. 11. The words which appear in England, in the forms for estate duty, appear at the heading of the accounts, and they are as follows: "Personal property, etc., for or in respect of which the grant is made" (*vide Account (i) etc., in the forms in use in England*).

Probates and Letters of Administration are really documents of title, and this, in one sense, is recognised by sec. 19. An executor derives his title from the Will, and Probate is evidence of that title. An administrator, on the other hand, derives his title from the grant. (*For further notes as to this, see secs.* 188—191, *Indian Succession Act, Henderson's Testamentary and Intestate Succession, and secs.* 12 *and* 14, *Probate and Administration Act, 2nd edition, by the author.*)

Grants of Probate, or Letters of Administration, have, in one sense, nothing whatsoever to do with the amount, or value of the property, of the deceased. The grants, no doubt, show the duty paid, and in that sense show the value of the estate as disclosed, but this does not, and cannot,

preclude an executor, or an administrator, from recovering assets, which come to his knowledge, although not included in his affidavit.

There have been discussions as to the meaning of the words "*The amount or value of the property*" and the result thereof is this :—That the amount of duty payable is upon the value of the *net assets*. In other words, the expression "Amount or value of the property" signifies the *net* value, which is obtained, by deducting the debts and expenses, from the gross value.

Attention is directed to the following cases, touching upon the point of valuation, for purposes of payment of duty :—

(1) CASES RELATING TO MEANING OF THE WORDS "AMOUNT OR VALUE OF THE PROPERTY."

In the case of *Collector of Maldah* v. *Nirode Kamini Dasi*, 17 C.W.N. 21, the Court held that where the gross value of the property in respect of which an application has been made exceeds Rs. 1,000/-, but the net value after deducting liabilities is below that amount, duty is payable under Art. 11 though payable on the said net value, under the provisions of Art. 11 read with Schedule III. The exemption from liability to pay provided by sec. 19, Cl. VIII and No. 11, Sch. I of the Act, applies only in cases where the *gross* value does not exceed Rs. 1,000/-. *(This case has been overruled—see Goods of Quiningborough hereafter referred to.)*

(Note.—Here it may be added the procedure was at any rate in Calcutta to charge the duty in

every case where the gross assets exceeded Rs. 1,000/- *except in insolvent estates, e.g., if the gross assets were Rs.* 2,500/- *and the liabilities Rs.* 2,000/- *duty was charged on the Rs.* 500/-.)

The question of the scale of duty was raised by the Administrator-General of Bengal in the *Goods of Harriett Teviot Kerr*, 18 C. L. J. 308, 18 C. W. N. 121, where the Collector claimed duty at 3 per cent., because the gross assets exceeded Rs. 50,000 in value, although the net assets were less than that figure. Upon a reference under sec. 5, the Court, Jenkins, C. J. and Mukerjee, J., held *inter alia*—

1. The true mode of interpretation of a Statute like the Court Fees Act, which had been repeatedly amended, is not to consider individual sections, but to take them as a whole, and to give effect to the legislative intent, upon a particular matter.

2. That the expression "Value of Property" is the market value, or the value of the entire property, less the amount of encumbrance, was the reasonable construction of the expression.

3. That the Court Fee, payable in respect of the estate left by the deceased, is to be calculated upon the net value of the estate, obtained by deduction of the amount of the debts, from the gross value of the estate.

4. That the decision in 17 C. W. N. 21 (*see previous case*) might require re-examination, and further consideration.

The result of above is that the scale is to be calculated upon the net value and not the gross value.

Owing to the above decisions the matter was again taken up by the Administrator-General of Bengal in the *Goods of Quiningborough*, 22 C. L. J., 160. Here the facts were—Gross assets, Rs. 1,244-11-0; Liabilities, Rs. 522; Net assets, Rs. 722-11-0. The Administrator-General claimed total exemption. The Registrar at his request made a reference (see pages 160—162). Mukerjee, J., held that for purposes of Art. 11 the expression "*the amount or value of the property*" signified the *net value* obtained by the deduction of the debts and expenses from the gross value and dissented from the decision reported in 17 C. W. N. 21. Here attention is also directed to a case from Burmah, *viz.*, *In re Chin-Ah-Yaing*, 24 Indian Case, 823, 7 Burmah Law Times, 275, where it was held that where the meaning of the legislature is not clear, the doubt must be given in favour of the subject and that the expression "*the amount or value of the property*" refers only to the net value, and where such value does not exceed Rs. 1,000/-, no duty is payable.

(2) PROPERTY SUBJECT TO MORTGAGE. WHAT IS THE "VALUE" ON WHICH DUTY IS PAYABLE.

Here again cases have arisen owing to the wording of column 2 and attention is directed to the following:—

Goods of Charles Edward Maclean, 6 N. W. P. H. C. R., 214.

Here it was held that where an executor applies for probate, in respect of property which

was alleged to be charged, and mortgaged, in excess of its value, no fee was payable, and in such a case if, when the accounts are filed, it is found that sufficient duty has not been paid, the payment of the deficiency can be enforced. It was further held that the term "*value*" in the section meant market value, and the market value of mortgaged property is the *equity of redemption*. Again *In re the last Will of Rama Chandra Lakshmanji*, I. L. R. 1 Bom. 118, the Court held, *inter alia*, that where the property in respect of which probate is sought is mortgaged, the amount of the mortgage encumbrance must be deducted from the market value of the property, and the fee charged on the balance. A similar decision was given in the *Goods of Lt.-General Peter Innes*, 16 W. R., 253, 8 B. L. R. App. 43, in regard to property subject to a mortgage. *See also Goods of Mrs. Harriett Teviot Kerr*, 18 C. W. N., 121, where there was a mortgage.

(3) Value of Annuity or Property Subject to an Annuity.

In the case of *In re the last Will of Rama Chandra Lakshmanji*, I. L. R. 1 Bom. 118, above referred to, it was held that, for the purpose of determining the probate fee to be paid, in respect of an annuity the word "value" in Art. 11 must be taken to mean the market value of the annuity, and not *ten* times the amount of the yearly payment, and in the case of *In the Goods of Malcolm Gasper*, I. L. R., 3 Cal. 375, it was held that where property disposed of by a Will had been bequeath-

ed subject to the payment of an annuity out of it to a person who survived the testatrix, and the executor obtained probate, the fee payable should be levied on the *value* of the property at the time of the grant of probate *less* the capitalised value of the annuity. A similar decision was given in the case of *In the Goods of Rushton*, I. L. R. 3 Cal., 736.

Chandra Bala Kuar v. *Collector of Darbhanga*, Patna L. J., Vol. II, p. 611. Here it was held that the trusts referred to in item No. 4, Annexure B, are trusts held beneficially by the testator during lifetime and not trusts created by testator's Will.

(4) CASES RELATING TO PROPERTY DISPOSED OF UNDER POWER OF APPOINTMENT.

In the Goods of Julia Oram, 21 W. R. 245. Here under the Will of General Riely, which was proved in 1867, Julia Oram had a life interest in Rs. 10,000, with a general and absolute power of appointment, which she exercised. The Administrator-General applied for probate, and claimed exemption from duty, on the authority of the English cases referred to in the report. It was held there was no provision in the Court Fees Act of 1870 (*as then framed*) for the levy of an *ad valorem* fee on personal property appointed by the Will, under the general power of appointment.

Goods of Olivia Homenden George, 15 W. R. 457, 6 B. L. R., App. 138.

In this case there was a reference. One T. conveyed certain property to L. upon trust to pay the income to T. for her life, and after her death to

hold it upon trust for her children in such manner or form as she (T) should by Will appoint. T afterwards married G and thereafter made a Will of which she appointed her husband and the Trustee of her settlement, *viz.*, L, executors. It was held the *ad valorem* fee was *not* payable in respect of such trust. (But see I. L. R. 25 Mad. 515, *hereafter referred to*). See also reference in the case of *Goods of Beresford and Goods of Sir T. H. Maddock*, 15 W. R. 156, where it was held that trust property descending on the death of the trustee is liable to *ad valorem* stamp duty prescribed by Art. 11.

In the recent case of In re *Lakshminarayan Ammal*, I. L. R. 25 Mad. 515, one A directed by his Will that a sum of Rs. 7,000 should be let out at interest, and that the sum should be added to the principal, and that the amount so accruing, should be paid to whoever B, his wife, should appoint by Will. A died; his Will was proved, and duty was paid on the Rs. 7,000. B executed a Will by which she exercised the power, and then died. Her executors applied for probate, and the question was raised whether duty was payable. It was held that the power created was "property" within the meaning of the Act, and the estate of the testatrix was liable to duty. The *case of Goods of George*, 15 W. R. 457, 6 B. L. R., App. 138, was commented on; *see page* 516, *and cases referred to*.

General Doctrine.

Regarding above cases, and the general doctrine in regard to a power of appointment, executed by

a general bequest, attention is here directed to the provisions of sec. 78 of the Indian Succession Act (*see Henderson's Testamentary and Intestate Succession for Notes and Cases*).

In England, in any event, as regards property over which the deceased had an absolute power it is property, of which the deceased was competent to dispose, and the executor is accountable in so far as it is personal (*Sec.* 8 (3) *Finance Act*, 1894). If realty, the executor can leave the payment to the trustee, or other accountable party, under the Will, or deed, under which the deceased derived the power (*see Forms in use in England as to Legacy Duty, Succession Duty, Settlement Duty and Estate Duty*).

(5) CASES RELATING TO DISPUTED VALUATIONS, ETC.

(*a*) *Property denied as belonging to deceased.*

In the case of *Nittyo Kali Dabea* v. *Kedar Nauth Chatterjee*, 5 Cal. L. R., 368, it was held that where the applicant denied the property belonged to the deceased, it ought not to be included for purpose of duty until the contrary was proved.

(*b*) *Property subject to suit.*

It was held in the case of *In the Goods of Abdool Aziz*, I. L. R., 23 Cal., 577, that when property is not reduced into possession, when probate is taken out, but the right to recover it, is subject to a suit, the applicant can value it as less than Rs. 1,000 and this can be accepted by the Court. But in the case of *Saldanha* v. *Secy. of State*, I. L. R. 24 Mad. 241, it was held that the mere

fact that an item is subject of litigation, does not in itself, prevent the value from being assessed for the purpose of stamp duty, on an application for probate.

(*c*) *Uncertainty of recovering property.*

In the *Goods of Ram Chandra Ghose*, I. L. R. 24 Cal. 567, it was held the uncertainty of recovering a debt, was no ground for proportionate reduction of fee payable: *see also Goods of Edward Lane Beake*, 21 W. R. 397.

(*d*) *Dispute as to valuation.*

It was held in the case of *Rodrigues* v. *Matheas*, 9 M. L. T. 314, 21 M. L. J. 481, that where there was a counter-petition oposing a grant, on the ground of undervaluation, and there was an appeal, the article applicable was Art. I, Sch. II and not Art. II, Sch. I, and on principle an *ad valorem* stamp should not be levied.

(*e*) *Right to property declared by Court.*

In re *Sreenath Dass*, 20 W. R. 440. In this case there was a settlement which was embodied in a decree, and certain securities, etc., were endorsed in favour of one of the parties "D" by the administrators *pendente lite*. The Bank of Bengal, and Companies concerned, refused to recognise the transfer. D then applied for administration, and claimed exemption, on the ground her right had been declared, and she ought not to have been required to produce administration. It was held the duty must be paid.

(NOTE.—*It is difficult to understand how this point could now arise as even an administrator* pendente lite *must pay the duty before the grant to him could issue, and where this is done the securities could be transferred by him into his own name as such administrator, and he could thereafter transfer them as directed by the Court in the preceedings in which he was appointed.*)

(6) AS TO TRUST PROPERTY.

See notes appearing under sec. 19*D and under this heading in Annexure B to affidavit.*

(7) AS TO DUTY ON SECOND OR SUBSEQUENT GRANT.

See notes appearing under sec. 19*C.*

(8) AS TO ENQUIRY AS TO VALUE.

See notes under sec. 19*A*, 19*B*, *and* 19*H*.

PART II.—PROCEDURE AS TO PAYMENT OF DUTY.

The first point to draw attention to, is as to the provisions of sec. 19*I* which was added by Act XI of 1899. The purport of that section is, that no order entitling a person to a Grant of Probate, or Letters of Administration, shall be made until such person (*i.e.*, the petitioner) has filed an affidavit of valuation, in the form set out in the 3rd Schedule, and the Court is satisfied the fee mentioned in Art. 11 of the 1st Schedule has been paid, on such valuation.

Prior to the above enactment, the procedure was to set out the assets in the body of the petition for probate or administration, and the duty was paid *after* the order for a grant had been made.

No affidavit was required, and nor were the details now required necessary.

The method of applying for a grant of probate, or administration, is by petition (*vide* secs. 244 and 246, 246A of the Indian Succession Act, and secs. 62, 65 of the Probate and Administration Act).

(NOTE.—*A complete set of forms of petition and affidavits of valuation will be found in the work entitled "Handbook of Administration Law in India" by the author of this work.*)

There are certain further points which should be noted.

(*a*) The method of payment, is by the purchase of stamped paper, to the value of the duty payable, and this stamped paper is filed in Court and is thereafter utilised for the purpose of writing the grant thereon (*see notes to secs.* 25 *and* 26 *post*).

(*b*) If a caveat is entered, against the grant, the stamp paper is retained in Court, until the disposal of the caveat proceedings, and if the grant is ordered in favour of the applicant, such paper is used for the engrossment of the grant. But if, on the other hand, the applicant fails, he is entitled to the return of the stamp paper to enable him to obtain a refund of the value, unless such stamp paper was purchased from the funds of the estate, in which case an order would be made for the use of such paper, in the issue of the grant, in favour of the person to whom it has been ordered to issue.

(*c*) If the caveat has been entered, prior to any application for a grant, the proper procedure is to state the fact of the entry of such caveat in the petition, and to claim exemption of the payment of the duty until termination of the caveat proceedings. It must, however, be noted that the affidavit of valuation must be filed, and the duty must be paid by the person in whose favour the order for a grant is made in such proceedings.

(*d*) If an administrator *pendente lite* is appointed, in any testamentary proceedings, the duty must be paid before the issue of such grant, and upon termination of such proceedings the person in whose favour the *full* grant is ordered to issue is entitled to such grant free of payment (*see notes to sec.* 19*C*).

(*e*) Every person, to whom a limited grant issues, is bound to pay the duty on the entire value of the estate, unless such grant be only limited to certain assets, which would be a very exceptional case, and in that case duty would only be payable on such assets.

(*f*) No duty is payable where an order is made under the Administrator-General's Act under sec. 11 of Act III of 1913 authorising the Administrator-General to take possession. But such duty becomes payable when a grant is applied for by him, or by any other person in respect of such assets.

(*g*) Sec. 19I speaks of the petitioner filing an affidavit. It has, however, been held that the

Administrator-General is exempt from filing this affidavit *see Goods of P. J. Avdall*, 3 C.W.N. 298; *Goods of McComesky*, I. L. R. 20 Cal. 879.

In practice, however, he gives the particulars required in his petition (*vide form in Handbook of Administration Law in India and also Law relating to Administrators-General and Official Trustees in India, sec.* 29, *Act III* of 1913).

The same procedure, it is submitted, is applicable to the Official Trustee in the event of his applying for probate (*see* Act II, 1913, and abovementioned work).

(*h*) It has been held by the High Court in Calcutta, that in Presidency Towns, the payment of duty should be made to the Registrar, and certified by him to the Court, and in case of exemption the Taxing Officer's certificate should be produced (*see Goods of Omda Bibi*, 3 C. W. N. 392, I. L. R. 26 Cal. 407).

(*i*) It seems to me, that in all High Courts, and Chief Courts, the fees are payable to the proper officer, be he a Registrar or other officer deputed to receive such fees, and grant a certificate in respect thereof. It has been laid down in the case of *Pa Ke* v. *Naw Bo He, Lower Burmah Rulings*, 1893, 1900, page 623, that in subordinate courts, the fees are to be paid to the Court Clerk, who has to certify the amount to the Court, and this certificate, and the Court Fee Stamp, must be attached to the application.

(*j*) The present procedure of purchasing stamped paper, and then utilising same for purpose of engrossing the grant, is rather a cumberous one, and I have known certain cases where the form is spread out into several sheets of stamped paper. It seems to me that some other less cumbersome procedure in regard to payment of duty could be devised. I personally see no reason why cash could not be paid, and some form of certificate be issued as to due payment, and a certificate issued on the face of the grant as to amount of duty paid. This might, perhaps, necessitate an alteration in the form of the grant, as at present issued, but there should be no difficulty as to this, and in fact it would be an advantage. A comparison of the grants issued in England, with those issued here, will show at a glance how cumbersome the latter are at times.

(*k*) Whilst on the subject of the form of grant, I would strongly advocate a complete change in such forms, and in dealing with grants issued during minority, would suggest including a statement as to when the infant, or infants, during whose minority such grant issues, comes of age. At present there is nothing to indicate this, and it is of the utmost importance, in dealing with administrators who have such grants, that persons should know whether their powers have ceased, or are still in existence. It may be said that this is beyond the range of the subject of estate duty, but it is, I think, a point which has hitherto drawn no, or too little, attention.

CHAPTER III.

DEALING WITH THE AFFIDAVIT OF VALUATION.

The form of affidavit as to valuation of assets was introduced by the amending Act XI of 1899 (sec. 3) and it was embodied as Schedule III to the Court Fees Act of 1870.

It is proposed in this chapter, to deal with this form, and points arising on the paragraphs therein contained, as also the headings given in Annexures A and B. Before, however, doing this, it is proposed to set out the form of the affidavit, as given in the Act, and to follow this with a sample form, for use in accordance with the form as laid down, and thereafter to deal with affidavit and headings contained therein.

The form as given in the Schedule is as follows:—

SCHEDULE III.

(*See section* 191.)

Form of Valuation (*to be used with such modifications, if any, as may be necessary*).

IN THE COURT OF

Re *Probate of the Will of* (*or Administration of the Property and Credits of*), *deceased*.

I {solemnly affirm / make oath}

and say that I am the executor (or one of the executors, or one of the next-of-kin) of deceased, and that I have truly set forth in

Annexure A to this Affidavit all the property and credits of which the above-named deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items but inclusive of all rents, interest, dividends, and increased values since the date of the death of the said deceased are under the value of

ANNEXURE A.

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF DECEASED.

	Rs.	As.	P.
Cash in the house and at the banks, household goods, wearing apparel, books, plate, jewels, etc.			
(State estimated value according to best of Executor's or Administrator's belief.)			
Property in Government securities transferable at the Public Debt Office.			
(State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.)			
Immoveable property, consisting of ...			
(State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value, and all rents that have accrued.)			

ANNEXURE A—contd.

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF DECEASED—contd.

	Rs.	As.	P.
Leasehold property			
(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth, and the value of such, inserting separately arrears due at the date of death, and all rents received or due since that date to the time of making the application.)			
Property in public companies			
(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes, and other securities for money.			
(State the amount of the whole; also the interest separately, calculating it to the time of making the application.)			
Book debts			
(Other than bad.)			
Stock in trade			
(State the estimated value, if any.)			
Other property not comprised under the foregoing heads.			
(State the estimated value, if any.)			
TOTAL ...			
Deduct amount shown in Annexure B not subject to duty.			
NET TOTAL ...			

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

	Rs.	As.	P.
Amount of debts due and owing from the deceased, payable by law out of the esate.			
Amount of funeral expenses			
Amount of mortgaged incumbrances ...			
Property held in trust not beneficially or with general power to confer a beneficial interest.			
Order property not subject to duty ...			
TOTAL ...			

SAMPLE FORM OF AFFIDAVIT.

HIGH COURT OF JUDICATURE at (add particulars)

OR

IN THE COURT OF THE DISTRICT JUDGE of (add particulars).

IN THE GOODS OF X Y Z (*here insert full name of the deceased*), late of (*here insert description*) deceased.

I. I, A B (*fill in full name*), residing at (*fill in particulars*), make oath (*or solemnly affirm*) and say that I am the Executor (*or one of the executors*) named in the last Will and testament of X Y Z the deceased abovenamed (*or I claim to be executor appointed by implication in the last will and testament of X Y Z the deceased abovenamed*) or (*I am the widow,*

husband, son or daughter, etc., and as such the next-of-kin or one of the next-of-kin of X Y Z the deceased abovenamed) and I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death and which have come or are likely to come to my hands.

II. I further say that I have also set forth in Annexure B all the items I am by law allowed to deduct.

III. I further say that the said assets exclusive only of such last-mentioned assets, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased are under the value of Rupees.

ANNEXURE A.

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF THE DECEASED.

DESCRIPTION.	Value.	
	Rs. As. P.	
1. CASH IN THE HOUSE	100 0 0	
2. CASH IN THE BANKS—		
(*a*) Amount to credit of the deceased in the Bank of (name Bank) ...	2,500 0 0	
Interest due	Nil	
(*b*) Amount due on Fixed Deposit Note No. 152 dated 10th January, 1916, in the Bank of (name Bank)	5,000 0 0	[Note—See Note A. hereafter.]

DESCRIPTION.	Value.
	Rs. As. P.
Interest due on above from the 10th January, 1916, to at 5 per cent.	
3. HOUSEHOLD GOODS, ETC.—	
(*a*) Furniture valued at ...	1,500 0 0
(*b*) Horses and carriages valued at ...	800 0 0
(*c*) Motor car or cars valued at ...	4,000 0 0
(*d*) Wearing apparel valued at ...	200 0 0
(*e*) Books valued at	100 0 0
(*f*) Jewels valued at	1,000 0 0
4. PROPERTY IN GOVERNMENT SECURITIES TRANSFERABLE AT THE PUBLIC DEBT OFFICE—	
(*a*) Government Securities as follows :—	
[Note— See Note B. hereafter.] 3½ per cent. loan of the year 1842 being No. 1532 for the face value of Rs. 5,000 now of the market value of 90 per cent. ...	
Interest due on above from the day of to the day of ... Rs.	
Less Income Tax ... Rs.	
Balance ...	
(This illustration is given to show how Government Paper should be described.)	

Description.	Value.
	Rs. As. P.
per cent. Calcutta Municipal bentures of the year ing numbered 1645 for Rs. 5,000 w of the market value of 95 r cent.	
terest due on above m the day of the day of ... Rs.	
ss Income Tax ... Rs.	
Balance ...	
his illustration is given to w how Municipal Debentures Port Trust Debentures should described.)	
VEABLE PROPERTY CONSISTING	[See Note C. on this hereafter.]
e house and premises situate at d being No. Street or Lane the town of Calcutta bearing annual assessment of Rs. years' purchase ...	
nt due for above from the y of to the day of or for the months of ...	
e vacant (or tenanted) piece of nd situate at aring an annual assessment of . at years' purchase	
nt due for the months of ...	

DESCRIPTION.	Value.
	Rs. As. P.
(*c*) The house and premises known as situate at there being no Municipal assessment. The rent derived is Rs. per month. The value of the house and land according to the market value thereof is ...	
Rent due for the months of ...	
(*d*) Zemindary situate at the net rental of which after providing for revenue, cesses and rent due to superior landlords is Rs. per annum and this taken at years' purchase gives the valuation of the zemindary at ...	
Rents in arrear	
6. LEASEHOLD PROPERTY—	
The land or garden house situate at known as which was held on a lease for years from the day of . There now remaining years to run. The rental payable being Rs. per mensem or annum. The profit derived from this leasehold is Rs. per annum and calculating at this rate for the unexpired portion of the term the value of the leasehold interest is	
Rents due in respect of above ...	

[See Note D. hereafter.]

DESCRIPTION.	Value.	
	Rs. As. P.	
7. PROPERTY IN PUBLIC COMPANIES—		
(*a*) 300 Ordinary (or Preference, etc.) shares in the A. B. Co. Ld. of the face value of Rs. each and of the present market value of Rs. each		[See Note E hereafter.]
Dividends due on above for the half-year ending ...		
The numbers of the Shares are as follows:—1628, etc.		
(The above illustrates how Shares should be described.)		
8. POLICY OR POLICIES OF INSURANCE—		
(*a*) Amount due on Policy No. in A. B. Co. (name Company) for Rs. including bonuses of Rs. and after adjustment of premia due		[See Note F hereafter.]
9. MONEY OUT ON MORTGAGE AND OTHER SECURITIES SUCH AS BONDS, MORTGAGES, BILLS, NOTES AND OTHER SECURITIES FOR MONEY.		
(*a*) Amount due on a Bond executed by A. for Rs. and dated the including interest calculated up to		[See Note G hereafter.]
(*b*) Amount due on a mortgage executed by A. for Rs. and dated the including interest calculated up to ...		

DESCRIPTION.	Value. Rs. As. P.
(*c*) Amount due by A on the pledge of certain articles including interest calculated up to ...	
(The above are set out as examples.)	
10. BOOK DEBTS—	
[See Note H hereafter.] Amount due on account of outstandings due to the deceased ...	
11. STOCK IN TRADE—	
[See Note I hereafter.] *(This would be applicable if the deceased were engaged in a business and the value could then be given from his books, or on value.)*	
12. OTHER PROPERTY NOT COMPRISED UNDER THE FOREGOING HEADS.	
[See Note J hereafter.] (*a*) Amount due for arrears of salary	
(*b*) Amount due for arrears of pension.	
(*c*) Amount due as legacy from the estate of	
(*d*) Amount due to the deceased as his interest in the firm of A. B. and Co.	
(The above are given as examples.)	
TOTAL RS. ...	
Deduct amount shown in Annexure B not subject to duty	
NET TOTAL ...	

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

DESCRIPTION.	Value.	
	Rs. As. P.	
1. AMOUNT OF DEBTS DUE AND OWING FROM THE DECEASED PAYABLE BY LAW OUT OF THE ESTATE—		[See Note A hereafter under Annexure B.]
(*Here set out particulars of all debts known.*)		
2. AMOUNT OF FUNERAL EXPENSES— Amount due to A. B. and Co., (Undertakers for the funeral) ...		[See Note B hereafter under Annexure B.]
3. AMOUNT OF MORTGAGE ENCUMBRANCES		
(*a*) Amount due by the deceased on a mortgage dated of his house and premises (described in Annexure A) in favour of including interest calculated in terms of mortgage up to the day of		[See Note C hereafter under Annexure B.]
(*This is set out as an example.*)		
Property held in trust not beneficially or with general power to transfer a beneficial interest.		[See Note D hereafter under Annexure B.]
(*See note hereafter point.*)		
Other property not subject to duty.		[See Note E hereafter under Annexure B.]
(*Here give particulars, if any.*)		
TOTAL RS. ...		

Description.	Value.
	Rs. As. P.
Sworn (or solemnly affirmed by the said A. B. this day of	
Before me	
Commissioner (or other officer authorised to administer oaths).	
NOTE.— *In framing this sample form the intention has been to give applicants an idea of what should be done in giving the information required by the law as it at present exists.*	
It is now proposed to discuss points arising on this affidavit.	

POINTS ARISING ON THE AFFIDAVIT.

Sec. 191, Administrator-General.

I. Sec. 191 enacts in effect that every petitioner must file the affidavit. It has, however, been held that the Administrators-General are exempt from so doing, on the ground that under the Act governing his duties, etc., he is exempt from verifying his petition. See the following cases :— *Goods of P. J. Avdall*, 3 C. W. N. 298; *Goods of McComesky*, I. L. R., 20 Cal. 879.

When these decisions were given, the Act governing the Administrator-General, then in force, was Act II of 1874 and there were only then three Administrators-General, (1) Bengal, whose jurisdiction extended to Punjab, United Provinces,

Central Provinces, Assam; (2) Bombay, and (3) Madras. The Act of 1874 was repealed by Act III, 1913, and there are now Administrators-General for (1) Bengal, (2) Bombay, (3) Madras, (4) United Provinces, (5) Punjab, (6) Assam, (7) Burma, and the cases above referred to are applicable under the new Act as well.

In order, however, to have uniformity the particulars required by the affidavit are embodied in the petition. In regard to joint executorship with another, the only case that I am aware of, and which has not been reported, is *In the Goods of Mrs. Ezekiel*. The grant was to the daughter and the Administrator-General of Bengal and was made on the 10th day of September, 1914. In that case the daughter was required to file the affidavit, and the Administrator-General adopted such affidavit, in the joint petition.

Official Trustee.

II. As regards the Official Trustee, there was no power given to him to act as executor by the Act of 1864. This Act was repealed by Act II, 1913, under which the Official Trustees have been appointed for Provinces as above, and, furthermore, the Act enables that official to act as executor in certain cases. This official is also exempt from verification and it is submitted the same procedure as above would apply to him.

(*For forms of petition see Handbook of Administration Law in India and for duties, etc., of above officials, see Law Relating to Administrators-General and Official Trustees in India, both by the writer hereof.*)

III. PARA. 1.—The affidavit is applicable, not only to an executor named in a Will, but also to one who claims to be executor by implication, or to a person who claims administration with Will annexed, or in case of intestacy, and the first portion of the affidavit should be so worded, as to meet the requirements of the case.

The first portion of the affidavit, as given in the Act, assumes a state of things, which may, or may not, turn out to be true. It would, it is submitted, have been better to have followed the forms in England, *viz.*, to, firstly, give the name of the deponent, and then his desire to obtain a grant, specifying in what capacity he desired such grant, *i.e.*, whether as executor, etc., following this with the name and residence of the deceased, date of his death, and whether he left a Will, giving date, if he did, or whether he died intestate. It would also, I think, have been advisable to confine the first paragraph to these statements.

Such statements could then have been followed by further paragraphs relating to Annexures or Schedules referring to assets and liabilities (*see remarks hereafter*).

IV. AS TO MODE OF DATE OF VALUATION.—Certain remarks have already been made upon this subject (*vide ante page* 10 *et seq.*).

There has not, so far as the writer has been able to ascertain, any judicial interpretation upon the meaning to be placed on the paragraphs of this

affidavit. The only case which may be said to touch the point is the case of *In the Goods of Mrs. H. T. Kerr*, 17 C. W. N. 21, but that case principally dealt with the valuation upon which duty was payable and the scale on which it was to be paid.

The legal profession have adopted the view, and I submit it is the only view that could be adopted, that in setting out the particulars of assets—

1. The valuation should be given as existing on a date as near to the swearing of the affidavit as possible.

2. That interest, income and rents should be included up to such date.

It would really be impossible to calculate up to the time of making the application as indicated in the notes for amongst others the following reasons:—

1. Enquiries have to be made as to particulars of assets, assessments, dividends, etc.

2. The petition and affidavit have to be prepared, approved, and thereafter engrossed.

3. The petition has thereafter to be signed and the affidavit sworn, and it may be that the applicant does not reside at the place where the application has to be presented.

4. Thereafter the papers have to be stamped and presented to the proper officer to be checked.

5. The stamped paper for the proper amount of duty payable has to be purchased, and this at times means delay.

6. After the duty has been paid, and necessary certificates obtained, the application is then made.

It will be seen from this, that the only reasonable, and I submit the proper, construction, is the one above indicated, as to date of valuation, etc.

Whatever may have been the intention of the Legislature, or whatever precedent may have been intended to be followed, in regard to including income and increased values, since date of death. It is submitted that such system, so far as it existed in regard to Probate Duty in England, received its death-blow on the introduction of the Finance Act of 1894.

It is also submitted that a case has been made out for an alteration of the law on this particular point in India. It is, in fact, submitted that the form of paragraphs 1, 2 and 3, as now given, should be entirely recast.

V. HEADING OF AFFIDAVIT (ANNEXURE A.)—The first point to note is, that in Annexure A is brought in, both *movable* and *immovable* property. In England except in regard to small estates, the particulars and value of *personal* property (*movable*) and *real* property (*immovable*) are shown in distinct and separate accounts, or schedules. It is submitted that it would have been more convenient, to all parties concerned, had this system also been adopted here, and in regard

to stock, shares and securities, it would have been advisable to have had separate columns dealing with the face value, and market value thereof, carrying out the value for purpose of duty to a final column. This the writer would recommend in the event of any amendment in the law.

AS REGARDS ANNEXURE B.—Here, again, we have a mixture, and not as in England where debts are given in one schedule, funeral expenses in another, and incumbrances in another. This system not only facilitates check, but shows at a glance the position under each head.

As regards the last item, it is difficult to follow why this was brought under this Annexure at all, and here attention is drawn to the remarks appearing under this head, when we come to discuss this Annexure in detail.

Should there be an amending law, the writer would advocate the system in England being adopted.

VI.—HEADING OF ANNEXURE A IN DETAIL.

(*a*) *Cash in the house, etc.*

It will be seen on comparing this heading with similar headings given in the English forms that these are all brought under separate headings, and so far as cash in the banks is concerned, they are treated separately as to current and deposit accounts, and as to household goods, whether sold or unsold.

In dealing with these in the sample affidavit they have been dealt with under separate headings. If the household furniture, jewels, etc., have been valued, this should be so stated and the name of valuer and valuation given.

As regards amounts due from banks, the name of the banks should be given, and although there is no note under this heading as to interest, where interest is due, it should be brought in, having regard to the provisions of para. III of the affidavit.

(*b*) *Property in Government securities.*

Under this heading, should be included, not only, Government Paper, but also Municipal, and Port Trust Debentures. It is not quite clear why the words "*transferable at the Public Debt Office*" were used, and it might have been better to have used general words, under which could have been included securities whether issued by the Government of India, or Local Governments, or public bodies, other than those incorporated under the Indian Companies Act.

It is important to bear in mind the following points in regard to these securities :—

(*a*) Numbers should, if possible, be given, as this facilitates enquiries when a second grant is applied for. It is easy to identify numbers and, therefore, trouble is saved in seeking exemption under sec. 19*C* even if the numbers be renewed.

(*b*) It must be remembered, that interest on securities, such as above, accrues from day to day, although only payable half-yearly. Therefore interest should be calculated from the last day of actual payment, to the date of swearing the affidavit, or as near thereto as possible.

Care should also be taken to deduct income-tax payable, this being a legitimate deduction, and in this connection be it noted, that where interest is payable at the Public Debt Office, income-tax is always deducted from the interest payable.

If there be a number of securities, it is advisable to obtain a certificate from Stock Brokers as to value, and if this is obtained, reference should be made to it in the affidavit. Here, again, arises what may perhaps be called a technical difficulty, as no accurate value can be given for the time of swearing, inasmuch as the market fluctuates from day to day, and it cannot, therefore, be anticipated, so to speak. The valuation in this case, therefore, *must* be given, as existing on a date, before swearing the affidavit. In dealing with securities such as above in England, they are brought into the first portion of the account, dealing with personal property, and under two headings—(1) Stocks or Funds (including Exchange Bills) of the United Kingdom; (2) Stocks, Funds or Bonds of foreign countries or of British Dependencies and Colonies transferable in the United Kingdom, and interest is only calculated

up to date of death. As to personal property situate abroad and not saleable or transferable in the United Kingdom, this is shown entirely in a separate account. (*See Forms in use in England.*)

If any amendment is hereafter introduced, it would be advisable to follow the English form and include columns showing (1) numbers and particulars, (2) face value, (3) market value, (4) value for purpose of duty.

(*c*) *Immovable Property.*

See notes hereafter.

On a perusal of the note under this heading, it will be noted that a distinction is drawn between *houses* bearing a Municipal assessment, and *land* which, presumably, is not assessed, although not so expressly stated.

In Municipal areas, it is not only houses that are assessed, but also bustees, and tenanted land, and even sometimes vacant land, which are building sites.

In practice, therefore, where property, whatever be its nature, has a Municipal assessment, for purposes of payment of taxes, the proper method of description and valuation, is to describe same by its Municipal number or street, etc., and to value same at a certain number of years of the annual assessment. The Legislature has not fixed the number of years and, presumably, left this to the Courts concerned. In Calcutta, the High Court has fixed *twenty years* the annual assessment, but upon what grounds it is not stated.

As regards other land, or property, bearing no Municipal assessment, the area, and the market value is required. The market value must necessarily depend to a great extent upon the locality, and also the custom prevailing in such locality. In certain cases where it is rent-paying land, the value is fixed on the rental basis taking a fixed number of years' rental.

Cantonment Property.—In certain Cantonments, you have an assessment, and this at times operates hardly, as the owner only has an interest in the house, and not in the land. I have known from experience, where taking property on this basis, the value has come to very much more than the value of the house built on the land.

Zemindaries.—Here the value depends upon the tenure, and the custom prevailing in the locality, where the Zemindary is situate. Generally speaking, it is taken at a certain number of years' purchase, on the year's net rent roll, *i.e.*, *after* deducting revenue, cesses, superior landlord's rent, etc. There are many cases of landed property and interest in landed property, which are not dealt with, under this heading, and it is a question at times whether they should be brought under this heading, or under the heading of Leaseholds, or under the last heading given in Annexure A. I refer in this connection to Tea Estates, Indigo Factories, Sugar Factories, Distilling Concerns, and such like concerns. They are often privately-owned concerns, and they, so to speak, form a mixture of interest in immovables and movables. At

times they are brought under this heading and at others under the heading of Leasehold and at others under the last heading. A great deal must naturally depend upon the tenure and nature of interest. To my mind, if the interest is absolute, and freehold, it should be brought under this heading, if leasehold, under the next heading, and if it consists of a share only with other joint owners or under a partnership, then under the last heading. Care must be taken to separate the value of the immovable property, the buildings, plant, stock-in-trade and a separate value given to each, unless the whole concern be valued as a whole in a balance sheet such as is done in regard to Company property.

Valuation by Expert.—Although the heading does not say anything as to this, there is nothing to prevent an applicant from having property valued by an expert, and from giving this valuation under this heading. When this is done, the name of the expert, and date of his valuation should be disclosed.

Rent.—Any rent due, in respect of any immovable property, should be given at foot of the particulars of the property disclosed, and the rent should be included up to date of swearing the affidavit for reasons before stated.

Regarding English Forms.—On comparing the heading in the English forms it will be seen that excepting forms as to small estates, particulars of real property (immovable)

are disclosed in separate accounts, but rent accrued due on realty is apportioned up to date of death and is treated as personalty and included in the particulars of the personal estate.

There is this further point to be borne in mind, that in England partnership property, though realty, is treated as personalty and is brought into account relating to personal property, under a separate heading as follows:—

"The deceased's share in Real and Personal Property as a partner in the firm of "

Here it would be as well to add, that any interest in proceeds of sale in realty directed to be sold, by Settlement or Will, is treated as personalty, as also unpaid purchase money of realty, or leasehold, contracted in lifetime of the deceased to be sold.

(*d*) *Leasehold Property.*

It is sometimes a difficult question to decide whether, property should be included under this heading, or under the preceding heading. A great deal of property in this country is held under leases from Government direct, or from superior landlords. These are generally treated as immovables. Then, again, there are Zemindaries, Jute lands, Tea Estates, and Coal Property which at times are held on leases for a considerable number of years, it may be 99 years, or perhaps a perpetual lease subject to certain conditions. The heading, however, would appear to apply to property held under leases determinable after a certain number of years.

In valuing such interests the following particulars should be inserted :—

Date of lease, name of lessor, period of lease, number of years remaining, the annual profit derived, the number of years' purchase at which the interest is valued.

As regards rent, this should be included, but to date of swearing the affidavit.

Leasehold interests in England are treated as personalty and are included in the heading of Personal Estate, and the following particulars are required:—

1. Particular description.
2. Term unexpired at date of death.
3. Gross rents where let, and if not let, the gross assessment to property tax, or gross assessment to poor rate.
4. The ground rent.
5. The nature and amount of the yearly outgoing paid by the lessee as owner.

Rents are apportioned up to date of death.

(*e*) *Property in Public Companies.*

Attention is here directed to the example given in the sample affidavit. The object of giving the numbers of the shares held by a deceased, is to identify the shares, should a future grant become necessary to the same estate. Even if the shares be sold by an executor, or administrator, and the proceeds invested in other securities, his accounts should show this, and the applicant for the second

grant, by identifying the purchase of the new securities, with the shares originally held, would be entitled to exemption from duty under section 19C of the Act.

It will be noted, that the note under this heading, speaks of the value being calculated at the price *of the day*, but it is not stated what day. Having regard, however, to clause 3 of the affidavit, this must apparently mean a day before the swearing of the affidavit. The price of shares, like securities, varies from day to day, and it is submitted, that the value must be taken from the quotation, given on a certain day, before swearing the affidavit, otherwise it would be impossible to complete the affidavit. It certainly would have been better to have fixed the date of death (*see remarks in Chapter I*).

If there are a number of securities, it is advisable to obtain a broker's certificate as to value, and either refer to it, or attach it, to the affidavit of valuation.

Dividends.—Nothing is said in the note under this heading as to dividends, but interest is spoken of. Shares in companies do not ordinarily speaking carry interest, but dividends are declared from time to time out of profits, and these under clause 3, would have to be shown, even if declared after death, but before the swearing of the affidavit (*see remarks in Chapter I*). If there are large holdings in various companies, this sometimes

necessitates enquiries, and causes delay in the presentation of applications.

In England, the heading under which shares in companies are disclosed is "Proprietory shares or Debentures of Public Companies" and there are columns for nominal value of stocks, for market price, at date of death, and for gross principal value, at date of death.

It is also provided, that where they have been valued according to the official list of Provincial Stock Exchange, a copy of that list should be annexed. But where there is no official market quotation, other published quotations, or broker's certificate, or letters from the secretaries, showing the market value, at date of death, should be attached.

There is also a separate account relating to movables situate abroad, and not saleable, or transferable, in the United Kingodom. This is applicable, where the domicile of deceased was in the United Kingdom, and the value to be given, is on date of death. The difficulties in adjusting duty has already been referred to (*see ante page* 16).

It is submitted, that if the law is ever amended, it would be advisable to change the form of affidavit in India, in regard to this point, and particulars might be given in the following columns:—

1. Name of company.
2. Number of shares.
3. Number of scrip.
4. Class of shares or debentures.

5. Face value.

6. Market value at date of death.

7. Gross value for purposes of duty as at date of death.

8. Amount of dividends due, if any, at date of death.

(*f*) *Policy of Insurance upon Life.*

Under this heading should be included particulars of all policies due on the life of the deceased, giving number, name of company, amount due, including bonus, if any, after adjustment of all premia.

If the policy is in favour of a wife, or has been assigned, this should be stated, and exemption claimed from payment of duty, on the ground that the proceeds do not form portion of the estate.

It will be noted that nothing is stated as to amount due, or payable, on a policy on the life of a third person. Where there is any such asset, it should, therefore, be included under the last heading of Annexure A.

In England there are two headings as follows :—

1. Policies of insurance and bonuses, if any, thereon on the life of the deceased and *as per statement annexed.*

2. Saleable value of policies of insurance, and bonuses, if any, on the life of any person other than the deceased, *as per statement annexed.*

(*g*) *Money out on Mortgage and other Securities, etc.*

In the sample affidavit certain examples have been set out. Under this heading should be included all sums due on mortgages, giving date, and particulars of parties, bonds, giving dates, etc., bills, pledges, promissory notes, or any other kind of security. Each item should be disclosed separately.

Interest should be calculated up to a date, anterior to swearing the affidavit.

In England, there are two headings under the account relating to personal property as follows :—

1. Money out on mortgage, and interest thereon to date of death, *as per statement annexed.*

2. Money out on bonds, bills, promissory notes and other securities, and interest thereon to date of death, *as per statement annexed.*

It will be noted that in the affidavit as set out in the Schedule III, items *f.* and *g.* as above given are classed under one heading. It is better to separate these two as has been done in the sample affidavit.

(*h*) *Book Debts* (*other than bad*).

This heading would primarily apply to a person carrying on a business, profession, or trade where credit is given. Under this heading, however, should be included all debts outstanding, and which do not fall under any of the other headings. It is not necessary to go into minute details. It is sufficient to give the names of the debtors, and the amounts due. In England there are two

headings, *viz.*, (1) book debts, and (2) other debts, *as per list attached.*

The following points, however, would appear to require consideration in dealing with a certain class of debts.

(*a*) It will be noted that the term used, after the words book debts, are *Other than bad.* What do these words mean? Do they mean doubtful, irrecoverable, or what have been written off as *bad debts?* Now, in the eyes of the law no debt can be considered to be bad, unless for some reason it is not recoverable. In dealing with this point, therefore, we have perhaps to consider the provisions of the law of contracts, and the law of limitation. Under the former law, there are broadly put, two classes where a debt may become irrecoverable, firstly, under contracts which are voidable, and secondly, under contracts which are void, either due to incapacity, or for other reasons such as laid down in the Act. In regard to incapacity, you have infancy, unsoundness of mind, etc., and in regard to the latter, you have certain contracts which are declared to be void. It would follow, therefore, that a debt which arises under a voidable, or void contract, may become irrecoverable. It has been laid down in the case of *Goods of Ram Chandra Ghose*, I. L. R., 24 Cal. 657, that uncertainty is not a sufficient ground for a proportionate reduction. Now uncertainty can only apply to a case where a debt is due and recoverable, but it is doubtful whether it can be recovered. It cannot be said to apply to a debt

in respect of which there is no remedy. Take for instance the following :—

1. *Wagering Contracts.*—These are illegal, and cannot be enforced; yet they are considered as debts of honour.

2. *Barred Debts.*—Under the Limitation Act, no suit can lie for a barred debt, unless under an agreement falling within sec. 25 of the Contract Act. The debt, however, is not extinguished but the remedy is.

3. *Barrister's Fees.*—It is against the etiquette of the Bar for a Barrister to sue.

I am not aware of any case which has raised the above points, and the question which naturally arises is this. Should debts such as above be included or not? They, in one sense, are undoubtedly "*bad*," but on the other hand, there is nothing to prevent a debt of honour, or a barred debt, etc., from being paid, and when paid, there can be no doubt that they have become, and form, as much an asset of the estate as any other debt. In my opinion, therefore, the proper procedure to follow, would be to include them under a separate heading, and claim exemption from payment of duty, on the ground that they are not recoverable in law, and give an undertaking to pay duty on any such as might be paid or recovered.

(*i*) *Stock-in-trade.*

Under this heading which would apply chiefly to those who carry on a trade, or a business, should be included the value of all stock-in-trade, and an

estimated value thereof. If they have been valued then such valuation should be disclosed.

If the deceased had only a share in the business in partnership, then this share would be disclosed under the next heading.

In England the heading is :—

"Stock-in-trade," "Live and dead-farming stock," "Implements of husbandry," etc.

If sold realised £

If unsold estimated at £

(*j*) *Other Property not comprised under the foregoing Heads.*

It is difficult to specify with accuracy what items would fall under this head, as so much depends upon the circumstances of each case. In addition, however, to the items mentioned in the sample form of affidavit, it would perhaps be as well to refer to certain headings included in the English form, and which are not mentioned in Annexure A.

1. Goodwill of business if taken over at a price—

If valued according to custom of trade

If neither, estimated at

2. Profits of business from to date of death.

3. Ships and shares in ships registered at

4. The deceased's interest in real, and personal property, in the firm of

as per balance sheet signed by the surviving partners.

If not estimated at

5. The deceased's interest expectant on death of

In fact under this heading should be included all items which do not fall under any of the other headings (*see also notes under "Immovable Property"*).

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

Generally.

As previously pointed out, there is no distinction shown in this form, between debts payable out of personalty, and realty, as in England. Perhaps this is not necessary, owing to the provisions of the law in India.

It will further be noted, that there are no notes under any of the headings as in the case of Annexure A, and nothing is said with regard to interest on debts. Paragraph 2 of the affidavit, which refers to this Annexure, refers to it as including items, which the applicant is by law allowed to deduct.

As regards the question of interest, there can be no doubt, that this forms as much a liability against the estate, as the principal, and in preparing this Annexure, the applicant is entitled to calculate interest up to the same date as interest is calculated on assets. Moreover in adjusting

duty, the executor, or administrator, would be entitled to include this interest up to date of discharge of the debt, as it forms a liability of the estate.

In regard to the law, as to payment of debts, and priorities, so far as they exist in Indian law this is governed by sections 279—282 of the Indian Succession Act, and sections 101—104 of the Probate and Administration Act (*for further notes see Henderson's Testamentary and Intestate Succession and 2nd Edition Probate and Administration Act, both edited by the writer hereof*).

Nothing is said in this Annexure, with regard to contingent liabilities, or liabilities, arising where the deceased stood as surety, and in regard to which there might be a right of re-imbursement. Inasmuch as, however, they are liabilities, it is submitted that the applicant is entitled to include them, and thereafter adjust duty, if they have not been paid. Comparing this form with the forms in England attention is directed to the following so far as the latter forms are concerned.

1. The debts due to persons resident in the United Kingdom, or contracted to be paid there, or charged on property situate there, are set out in a separate account.

2. Funeral expenses are set out in a separate account.

3. The debts due to persons resident outside the United Kingdom, are set out in a separate account.

4. Account of debts and encumbrances upon realty are set out in a separate Schedule.

As to what can and cannot be deducted (*see section* 7, *Finance Act*, 1894 (*see also remarks at page* 39 *et seq. ante*).

5. There is also the further point to be noted hereunder, *viz.*, does the inclusion of a creditor's name in the Annexure amount to acknowledgment of liability, which would give a fresh period of limitation? It is submitted that such would not be the case. Then, again, the mere inclusion of a name of a creditor, does not prevent an executor, or administrator, calling upon such creditor to prove his claim, and in fact he would be bound to do so, before admitting such claim against the estate.

6. In concluding these notes, it should be pointed out, that an executor, or administrator, should carefully embody payment of all claims in his account, as he is entitled to deduct the amount of such claims when finally adjusting duty.

AS TO HEADINGS IN ANNEXURE B IN DETAIL.

"*A*"—*Amount of debts due and owing from the deceased and payable by law out of the estate.*

Under this heading should be set out particulars of all debts known, but secured debts should not be included under this heading. They should be brought under the next heading.

It will be noted that the words used are "*payable by law.*" Having regard to these

words it appears to me that debts, which arise out of contracts, which are void in law, are not allowed to be deducted, even though the legatees, or next-of-kin, may consent to payment of "debts of honour;" mere consent would not operate, so as to make the debt a "legal debt."

As regards "Barred debts" as an executor or administrator has a discretion to pay these, he would be justified in including them. This would apply to a solvent estate, but not to an insolvent one, as in that case the creditors, whose claims are not barred, would be prejudiced, and they would in any event have a right to be consulted.

"B"—Amount of Funeral Expenses.

Here must be included the name of the undertaker, and the amount incurred under this head.

In this connection, it would be as well to remember firstly, that cost of mourning and monument, does not fall within the heading, and secondly, the provisions of the law upon the subject, *viz.*, that they must be according to the station in life of the deceased (*as to this see the provisions of section* 279, *Indian Succession Act and section* 100, *Probate and Administration Act, Henderson's Testamentary and Intestate Succession, and the* 2*nd Edition of the latter Act, both edited by the writer hereof*). Cases of difficulties arise herein owing, perhaps, to the rapidity with which funerals have to be performed in India. At times it is impossible to say what the position of the deceased was, as to means and, generally

speaking, where there is a graveyard Undertakers bury the deceased in what is known as a "pucca" grave. Here certain fees have to be paid to the authorities, and these are added to the cost of the funeral. The cost, therefore, at times, may be out of all proportion to the value of the estate, which an executor, or administrator, would not be justified in allowing. Unless, therefore, the means of a deceased are known, the person ordering the funeral, should be careful as to what expenses he incurs, as it may be that he may make himself personally liable, for any excess that is allowed out of the estate. There is no definite ruling of the High Court in India to act as a guide on this point, but attention is directed to the cases decided in England, and referred to under the sections above referred to. It will be noted that the wording of the section of the Probate and Administration Act is different.

When an amount is named in a Will to be spent on a funeral or erection of a monument, the executor is not justified in exceeding the amount so mentioned.

In England the account for funeral expenses is brought into a separate account or schedule.

"C"—Amount of Mortgage Incumbrances.

No distinction is drawn here between amount due on pledges, or hypothecations, or pledges of movables, and amounts due under mortgages of immovables. Under this heading, therefore, should be brought not only amounts due on the

mortgages of immovables, but any sums due to Banks, or others, on the pledge of securities, goods, or other property, such as jewels, household furniture, stock-in-trade, assignment of life policies, etc.

It is submitted that the applicant would be entitled to include interest up to same date, as interest on assets, and that in adjusting duty, he would be entitled to include interest up to date of discharge of the incumbrance or pledge, etc.

In specifying the encumbrances, details should be given, and they should be identified with those properties referred to in Annexure A. Each encumbrance, etc., should be separately shown.

In England the amount of debts and encumbrances on real property are included in a separate Schedule.

" D "—Property held in Trust not beneficially or with General Power to confer a beneficial Interest.

This heading is presumably meant to cover that class of case, where the deceased at the time of his death, held property as a trustee, or as an executor, or administrator. In case of a trusteeship, relating to immovables, this is generally governed by some deed, and the property can be vested in a new trustee by a deed of appointment, or under an order of the Court. Difficulties, however, often arise where securities stand in the name of a person who really holds them as trustee of a

Will, or as executor or administrator. Companies as a rule do not recognise trusts and are not bound to do so under the Company Law. Securities or shares, therefore, have to be registered in the name of the individual. In India what is known as "derivative executorship" is not recognised, and it becomes necessary to take out a *de bonis non* grant; but where securities stand in the name of an executor, it becomes necessary for some one to apply for a grant to his estate, before the securities can be transferred. This may best be illustrated by an example. "A" dies leaving a Will appointing "B" executor. B proves the Will, and for purpose of carrying out the provisions of the Will, transfers the securities into his own name. B, thereafter, dies, without fully administering, leaving the securities in his own name. In such a case, to carry out A's Will, an administrator *de bonis non* is necessary, but as the securities stand in B's individual name, it is also necessary to apply for administration to his estate, to effect a transfer of these securities, into the name of the administrator *de bonis non* to A's estate. If B has an estate of his own, his executor or administrator could include these securities in his affidavit and treat them as trust property. If, on the other hand, B had no estate, then limited administration could be applied for, *i.e.*, limited to effect a transfer of the securities.

The effect is really this, if a person holds property in the capacity of a *trustee*, it cannot be said that such property is an asset of his estate on

which duty is payable in his estate, although administration may be necessary, so as to effect or carry out a transfer to the person entitled.

As regards the proper method of dealing with such property, there are two methods :—

1. To include particulars of such property in Annexure A, under the last heading, giving particulars, and value, and then again embodying the same particulars, and value, under Annexure B, giving also in each case particulars of the trust. The result of this is B is deducted from A, the result being *nil*. (This is the procedure adopted in Calcutta.)

2. To give the particulars in Annexure B without carrying out any value, and merely showing that the property was held as trustee under a particular trust.

In referring to the forms adopted in England, the first point to note is that in the general forms, relating to estate duty, there is a statement in the paragraphs relating to the accounts, or schedules, disclosing the personal, and real estate, that such properties "*are exclusive of property which the deceased may have been possessed of or entitled to as trustee and not beneficially.*" None of the forms of accounts or schedules show a deduction as is contained in the Court Fees Act. On the other hand, there is a special form relating to property held as trustee, *viz.*, form Z—1 and the account thereto annexed is to be given full particulars of the property and of the trust, giving date

of and names of parties to any deed and the names of any parties to any deed and the name of any testator and the date of probate.

It would have been better, for reasons hereinbefore stated, even taking the affidavit as it stands, to have had a separate Annexure, say, Annexure C, in which could have been disclosed property held as trustee not liable to duty.

Should the Legislature, at any time frame an Act, such as has been suggested, the writer would advocate a separate Schedule being annexed, and where a grant is sought exclusively for purpose of dealing with property held as trustee, an entirely separate form of affidavit dealing with the subject. I also think it would be as well to adopt a separate form of affidavit when dealing with second, or subsequent grants.

Attention is also here directed to the provisions of sec. 19D *post* and the cases thereunder cited relating to *trust* property and see also *Goods of H. T. Kerr*, 18 C. L. J., p. 308 (p. 316) and 18 C. W. N. 21, where reference is made to this heading. *See also Chandrabati Kuar* v. *Collector of Darbhanga*, Patna L. J. Vol. 11, p. 6111.

"*E*"—*Other property not subject to duty.*

Under this heading could be brought in the following:—

1. Allowance for any remission made and allowed under sec. 35 of the Act (*see notes under that section post* 194 *page*).

2. Allowance for any duty paid under any sucession certificate (*Vide proviso to Art.* 11 *Schedule and remarks under scale of duty, pages* 5 *and* 58 *ante*).

3. Any class of deduction not falling under other heads, *e.g.* (*see the case of In the Goods of Frouchman, I. L. R.* 20 *Cal.*, 575, where it was held, that where married people held property under the Code Napoleon, and one of them died, it was *only one-half* of the property which was chargeable, the *other half* being exempted under sec. 19D.

Having dealt in some detail with the form of affidavit, and Annexures A and B, the writer would recommend a complete change in the form of affidavit, and annexures, in any future legislation upon the subject. There should, in his opinion, be firstly, a general form, with various annexures to meet each case, as above pointed out, and secondly, special forms dealing with *de bonis non*, or any subsequent grants, or in regard to grants limited to specific assets, or in regard to property held as trustee, whether under a deed or will, or as executor or administrator.

CHAPTER IV.

Dealing with Sections of the Court Fees Act which in any way relate to Estate Duty.

Before passing to the various sections of the Act which in any way touch upon the question of

estate duty, it is proposed firstly to draw attention to certain points.

1. Object of Court Fees Act.

As we have already seen, the provisions of the Act dealing with estate duty, was not embodied or incorporated till 1875, *i.e.*, 5 years after the original Act was passed.

It will be noted, turning to the commencement of the Act, that it does not have a "*preamble*" which is generally inserted in Acts in India. It was stated in the case of *Gavaranga Sahu* and *Boto Krishna Patro*, I.L.R. 32 Mad., 305, that one of the purposes of the Act was to levy fees, for services to be rendered.

As regards the provisions relating to estate duty, it may be said the object was to provide a means of recovering this particular mode of taxation.

2. Construction of Act.

The Act, so far as estate duty is concerned, has been added to from time to time, as previously pointed out. The sections, as they now exist, are out of order in their sequence, and owing to this method of legislation, questions have arisen as to the proper method of construction of the Act, as a whole, in regard to estate duty.

In the case of *In the Goods of Mr. H. T. Kerr*, 18 C.L.J. 308, and 18 C.W.N., 121, it is laid down that the true mode of interpretation of a statute like the Court Fees Act, which has been repeatedly amended, is not to consider individual sections, but

to take them as a whole, and give effect to the legislative intent upon a particular matter. Again in the case *In re Chin-ah-Yaing*, 24 Ind. Cases, 823, 7 Burm. L.T. 275, it is stated that when the meaning of the Legislature is not clear, the doubt must be given in favour of the subject (both cases related to the construction of Art. 11 and see also *goods of Quiningborough*, 22 C.L.J., 160).

Attention is also directed to the cases of *Hari Ram* v. *Akbar Husain*, I.L.R. 29 All. 749 and 4 All. L.J., 636, *and Barru* v. *Lackman*, 111 Punjab Record 1913, and the case of the reference reported in I.L.R. 14 Mad. 480. In the first of these cases it was stated that the safest canon of construction was the one laid down by Lord Russell in *Attorney-General* v. *Carlton Bank*, L.R. 2 Q.B. 164, *viz.*, "to give effect to the intention of the legislature, as that intention is to be gathered from the language employed, having regard to the contest in connection with which it is employed." To introduce limitations from other Acts when no such limitations are even suggested in the contest, is, in so many words, to legislate. The two latter cases in effect laid down that in fiscal Acts, when words are plain, effect must be given to them, and the Courts are not at liberty to vary the alteration, with reference to any real or supposed hardship, and that the words are to be construed in a manner which bears least heavily on the subject and it is not permissible to refer to the history (*see* also *Alamummal* v. *S. Mudaliar*, I.L.R. 38 Madras 988).

3. Chief Revenue Authority.

It will be noted that these words occur in certain of the sections hereafter, and the meaning is given in section 2 of the Act as follows :—

In the Act unless there is anything repugnant in the subject, or context, Chief Controlling Revenue Authority means

(*a*) In the Presidency of Fort St. George and the territories respectively under Lieutenant-Governors of Bengal and the North-Western Province and the Chief Commissioner of Oudh—the Board of Revenue;

(*b*) In the Presidency of Bombay outside Sindh and the limits of the town of Bombay—a Revenue Commissioner;

(*c*) In Sindh—the Commissioner;

(*d*) In the Punjab and Burmah including Upper Burmah—the Financial Commissioner; and

(*e*) Elsewhere—the local Government or such other officer as the local Government may by notification in the Official *Gazette* appoint in this behalf.

The above section was added by section 2, Act X of 1901. We have now the following Provinces :—

Bengal, Bombay, Madras } Under Governors.

United Provinces of Agra and Oudh—A Lieutenant-Governor.

North-West Provinces—Chief Commissioner.

The Punjab—Lieutenant-Governor.

Bihar and Orissa—Lieutenant-Governor.

Central Provinces—Chief Commissioner.

Assam—Chief Commissioner.

Delhi—Chief Commissioner.

Provisions of the Court Fees Act which in any way relate to the subject of Estate Duty.

Before dealing in detail with the sections contained in Chapter III A (containing from sec. 19A to 19K) which must be read with articles 11, 12 and 12A (*vide* full particulars pages 55—58 *ante*) of the first Schedule and also with the form of affidavit of valuation set out in Schedule III (introduced by Act XI of 1891) there are certain other sections of the Act, to which it is advisable to draw attention, and which also concern estate duty, *viz.*, the following :—

1. *Sec.* 3.—This deals with the levy of fees, and is dealt with in the notes to sec. 5.

2. *Sec.* 4.—The effect of this section is that no documents of any kind specified in the 1st and 2nd Schedules, and which are chargeable with any fees, shall be filed, exhibited, received or furnished by the High Courts unless the proper fee indicated by the Schedules has been paid.

As previously pointed out, Probate of a Will or Letters of Administration is a document and they are referred to in the first Schedule (Art. 11), but it is submitted that it is impossible to apply this section to Probate or Letters of Administration. This section, be it noted, is confined to High Courts only. There is, however, a similar section relating to other Courts, *viz.*, sec. 6. But the amending Act of 1899 introduced sec. 19K, whereby such section was made inapplicable to grants of Probate, or Letters of Administration. It is indeed curious that sec. 4 was not also dealt with in the same way.

It would be interesting to know what view would be taken by High Courts, if the point were raised in any appeal. As matters stand, a District Court would be entitled to admit the grant in evidence, although understamped. What would be the position of the High Court under sec. 4?

Taking a reasonable view in my opinion the High Court should not strictly apply sec. 4 to grants of Probate or Letters of Administration.

Here, however, appears to me another point requiring reconsideration.

3. *Sec.* 6.—This is not applicable to grants having regard to the provisions of sec. 19K.

4. *Sec.* 19.—See notes hereafter.

5. *Sec.* 25.—Do. do.

6. *Sec.* 26.—Do. do.

7. *Sec.* 27.—Do. do.

8. *Sec.* 28.—This section relates to the stamping of documents inadvertently received by Courts. By sec. 19K this section does not apply to grants of Probate or Letters of Administration.

9. *Sec.* 35.—This section relates to remission of fees (*see notes under the section hereafter*).

Having thus drawn attention to these sections, we shall now proceed to set out sections relating to estate duty as at present applicable and consider each one in its turn and the cases from time to time decided.

Procedure in case of difference as to necessity or amount of fee.

Sec. 5. WHEN ANY DIFFERENCE ARISES BETWEEN THE OFFICER WHOSE DUTY IT IS TO SEE THAT ANY FEE IS PAID UNDER THIS CHAPTER AND ANY SUITOR OR ATTORNEY, AS TO THE NECESSITY OF PAYING A FEE OR THE AMOUNT THEREOF, THE QUESTION SHALL, WHEN THE DIFFERENCE ARISES IN ANY OF THE SAID HIGH COURTS, BE REFERRED TO THE TAXING-OFFICER, WHOSE DECISION THEREON SHALL BE FINAL, EXCEPT WHEN THE QUESTION IS, IN HIS OPINION, ONE OF GENERAL IMPORTANCE, IN WHICH CASE HE SHALL REFER IT TO THE FINAL DECISION OF THE CHIEF JUSTICE OF SUCH HIGH COURT, OR OF SUCH JUDGE OF THE HIGH COURT AS THE CHIEF JUSTICE SHALL APPOINT EITHER GENERALLY OR SPECIALLY IN THIS BEHALF.

WHEN ANY SUCH DIFFERENCE ARISES IN ANY OF THE SAID COURTS OF SMALL CAUSES, THE QUESTION SHALL BE REFERRED TO THE CLERK OF THE COURT, WHOSE DECISION THEREON SHALL BE FINAL, EXCEPT WHEN THE QUESTION IS, IN HIS OPINION, ONE OF GENERAL IMPORTANCE, IN WHICH CASE HE SHALL

REFER IT TO THE FINAL DECISION OF THE FIRST JUDGE OF SUCH COURT.

THE CHIEF JUSTICE SHALL DECLARE WHO SHALL BE TAXING-OFFICER WITHIN THE MEANING OF THE FIRST PARAGRAPH OF THIS SECTION.

Notes and cases under sec. 5.

The following points may be drawn attention to in dealing with this section.

1. The section as worded is confined firstly to High Courts, and in order to clearly undertsand the first portion of the section, one should read section 3 which reads

"*The fees payable for the time being to the clerks* "*and officers (other than Sheriffs and Attorneys)* "*of the High Courts established by Letters Patent* "*by virtue of the power conferred by statute* 24 "*and* 25 *Vict. Ch.* 104, *sec.* 15, *or chargeable in* "*each of such Courts under No.* 11 *of the first* "*and Nos.* 7, 12, 14, 20 *and* 21 *of the second Sche-* "*dules to this Act annexed.*

"*And the fees for the time being chargeable in* "*the Courts of Small Causes at the Presidency* "*Towns and their several offices shall be collected* "*in manner hereafter appearing.*"

2. It must be noted that sec. 3 above quoted, only speaks of Article 11 of the first Schedule. This is the Article which deals with the amount of duty payable, and as already pointed out, the scale originally fixed was amended by Act VII of 1910. Again the section only speaks of the fees payable to High Courts, but as a matter of fact this duty

is payable in all Courts having power to issue grants.

3. Articles 12 and 12A are not referred to, as High Courts do not deal with the issue of Succession Certificates, but where a grant of Probate or Letters of Administration is subsequently issued, such High Court would be bound to give credit for the amount paid on the issue of such certificate under the provisio to Art. 11.

4. Dealing now with sec. 5, the first point to note is that it is confined in its wording, to differences arising in the High Courts, between the officer, and any suitor or attorney.

Reading this portion strictly, it might be said to mean that the section is only applicable to cases where there is a suitor. This, however, is not so, as the section has been applied in regard to questions of estate duty, and I do not think it can be said that an applicant for a grant, is a suitor, within the strict meaning of that word.

5. The section is absolutely silent as to what is to be done when a difference arises in a Chief Court, such as the Chief Court of Lahore or Burma, or in a District Judge's Court, or other subordinate Court, authorised to grant Probate or Letters of Administration. It seems to me that in such cases the matter would have to be dealt with by the Chief Judges or the District Judges, etc., as the case may be.

6. As regards the "*difference*" referred to in the section, so far as estate duty is concerned, it is difficult to see how any real difference could

possibly arise in regard to the valuation set out in the affidavit, unless of course there was a deliberate attempt at fraud. It seems to me extremely doubtful whether it would be within the province of any officer of a Court, or even the Taxing Officer, referred to, to discredit statements contained in an affidavit, assuming there was no attempt at fraud. Sec. 19H, which was inserted by Act XI of 1891, gives certain powers to the Chief Revenue Authority, or the Collector, in regard to valuations, but this is totally a different matter, and the provisions of that section is hereafter dealt with.

Difference of opinion, as to estate duty, between a Taxing Officer, or an officer whose duty it is to see that the proper fee is paid, could only, having regard to the existing sections, arise under the following heads:—

1. As to mode, or method of valuation.

2. As to proper scale of duty payable.

3. As to whether any particular item or items is or is not chargeable with duty.

4. As to whether any claim to exemption can be granted or not.

7. As to High Courts.—The following are the existing High Courts:—

1. High Court of Bengal situate in Calcutta.

2. High Court of Bombay—Bombay.

3. High Court of Madras—Madras.

4. High Court of N.-W. Provinces—Allahabad.

5. High Court of Behar and Orissa—Bankipur.

8. TAXING OFFICER.—Generally speaking all High Courts have an officer appointed as Taxing Officer, and where, therefore, there is a Taxing Officer it would be his duty to make the reference. But if there is no such officer, power is given by the section to appoint an officer.

9. SMALL CAUSE COURTS.—These Courts are not empowered to deal with applications for grants of Probate or Letters of Administration.

10. FINALITY OF DECISION.—It will be noted that the first portion of the section speaks of the decision of the Taxing Officer being final. I cannot at present imagine any case in relation to estate duty, where such a decision could be given, and in my opinion, if any difference in opinion were to arise on questions of estate duty, the party, or applicant, would be entitled to a reference. In other matters it has been held that there is no appeal from a decision by a Taxing Officer (*see Kuar Karam Singh* v. *Gopal Rai*, *I.L.R.* 32 *All* 59, 6 *A.L.J.* 972—*Balkaram* v. *Gobind Nath Tewari*, *I.L.R.* 12 *All.* 129—*Amjad Ali* v. *Muhammad Irail*, *I.L.R.* 20 *All.* 11—*Kasturi Chetti* v. *Dy. Collector, Bellary*, *I.L.R.* 21 *Mad.* 269—*Jugal Pershad Singh* v. *Parbhu Narain Jha*, *I.L.R.* 37 *Cal.* 914—*Badri Prasad* v. *Kundan Lall*, *I.L.R.* 15 *All.* 117. None of these decisions relate to estate duty).

11. AUTHORITIES AS TO ESTATE DUTY.—Attention is here directed to the references made

by the Taxing Officer of the High Court in Calcutta in the following :—

Goods of Mrs. H. T. Kerr, 18 *C.W.N.*, 121; 18 C.L.J. 308, dealing with the question of the proper scale of duty.

Goods of Quininghborough, 22 C.L.J., 160, dealing with the question of an exemption.

See also various cases referred to under sec. 19D as to trust property.

12. GENERALLY.—The provisions of sec. 5 were incorporated in the Act prior in date to the incorporation of the provisions as to estate duty introduced by Act XIII of 1875, *i.e.*, Chapter III A and were, of course, prior in date to the subsequent amendments, and additions, introduced by Act XI of 1891 and Act VII of 1910, and it seems to me that the provisions of this section were not considered, when these changes were introduced.

As matters, however, at present stand it is the only section under which a reference can be made, and as pointed out, it has been applied in various cases of questions arising.

Having regard to the amendment in the law introduced by sec. 191, a reference must naturally lead to delay in the issue of a grant, as until the points raised in the reference have been decided, the duty cannot be paid, and the grant cannot therefore issue. Although sec. 191 protects a delay owing to a motion made under sec. 19H, no such protection is given in regard to references, and this is a matter which may cause serious trouble, inconvenience and loss to the estate. As

an example let us take the case of *In the Goods of Mrs. H. T. Kerr*, 18 *C.W.N.*, 121, 18 *C.L.J.*, 308. Here the reference was asked for on the 15th day of May, 1913. It was made on or about 12th June, 1913. The matter was heard on 19th June, 1913, but judgment was not delivered till the 27th day of August, 1913, and the grant did not issue till the 9th day of September, 1913. In this case the Administrator-General, being executor, acted under the Will, and was thus able to proceed, but but this would not have been in the case of an intestacy, where the administrator derives his title from the grant.

It is obvious therefore that delay of this nature should be provided for.

The above remarks, it is submitted, prove the necessity of a reconsideration, by the legislature, of this particular section, in so far as it is applicable to questions of estate duty. If the suggestions hereinbefore contained were adopted, in regard to a separate measure, any such difficulties could be provided for and guarded against.

2. *Sec.* 19.—NOTHING CONTAINED IN THIS ACT SHALL RENDER THE FOLLOWING DOCUMENTS CHARGEABLE WITH ANY FEE :—

viii. PROBATE OF A WILL, LETTERS OF ADMINISTRATION (AND, SAVE AS REGARDS DEBTS AND SECURITIES, A CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827), WHERE THE AMOUNT OR VALUE OF THE PROPERTY IN RESPECT OF WHICH THE PROBATE OR LETTERS OR CERTIFICATE SHALL BE GRANTED DOES NOT EXCEED ONE THOUSAND RUPEES.

Notes and cases under section 19, *Clause* VIII.

The provisions of this section should be read with Articles 11, 12 and 12A first Schedule (*vide* pages 55—58 *ante*).

Shortly put, the meaning of this section, read in the light of recent decisions comes to this : Where, according to the affidavit of valuation, as now required, the value of the estate, *i.e.*, the net value, does not exceed Rs. 1,000, no duty is payable.

It will be noted that the words "*amount or value of the property*" used in this section are the same as those used in the Articles above referred to, and whatever views may have been held as to the meaning of these words, the decisions *In the Goods of Mrs. H. T. Kerr*, 18, *C.L.J.* 308; 18 *C.W.N.*, 121, *and in the goods of Quiningborough*, 22 *C.L.J.* 160 clearly establish the view, that whatever may be the gross value of the estate, it is not upon that, but upon the net value, that the duty is payable and if that does not exceed Rs. 1,000, then no duty is payable. Attention is here also again directed to the following cases already referred to :—

Collector of Maldah v. *Nerode Kamini Dassi*, 17 *C.W. N.*, *p.* 21 (*overruled*).

In re Chin-ah-Yaing, 24 *Ind. Cases*, 823.

Goods of C. E. Maclean, 6 *N.-W. P., H. Ct. R.* 214.

Goods of Lt.-Genl. Peter Innes, 16 *W. R.* 253.

Re Will of Rama Ch. Lakshmanji, *I.L.R.* 1 *Bom.* 118.

In conclusion it is submitted that this section also requires reconsideration, when a revision of the law is taken up on this point.

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

19*A*. WHERE ANY PERSON ON APPLYING FOR THE PROBATE OF A WILL, OR LETTERS OF ADMINISTRATION, HAS ESTIMATED THE PROPERTY OF THE DECEASED TO BE OF GREATER VALUE THAN THE SAME HAS AFTERWARDS PROVED TO BE, AND HAS CONSEQUENTLY PAID TOO HIGH A COURT FEE THEREON, IF, WITHIN SIX MONTHS AFTER THE TRUE VALUE OF THE PROPERTY HAS BEEN ASCERTAINED, SUCH PERSON PRODUCES THE PROBATE OR LETTERS TO THE CHIEF CONTROLLING REVENUE-AUTHORITY (FOR THE LOCAL AREA) IN WHICH THE PROBATE OR LETTERS HAS OR HAVE BEEN GRANTED, AND DELIVERS TO SUCH AUTHORITY A PARTICULAR INVENTORY AND VALUATION OF THE PROPERTY OF THE DECEASED, VERIFIED BY AFFIDAVIT OR AFFIRMATION, AND IF SUCH AUTHORITY IS SATISFIED THAT A GREATER FEE WAS PAID ON THE PROBATE OR LETTERS THAN THE LAW REQUIRED, THE SAID AUTHORITY MAY—

(*a*) CANCEL THE STAMP ON THE PROBATE OR LETTERS IF SUCH STAMP HAS NOT BEEN ALREADY CANCELLED;

(*b*) SUBSTITUTE ANOTHER STAMP FOR DENOTING THE COURT-FEE WHICH SHOULD HAVE BEEN PAID THEREON; AND

(*c*) MAKE AN ALLOWANCE FOR THE DIFFERENCE BETWEEN THEM AS IN THE CASE OF SPOILED STAMPS, OR REPAY THE SAME IN MONEY, AT HIS DISCRETION.

Notes and cases under sec. 19*A*.

General Remarks.

1. The chapter as originally framed was introduced into the Act by Act XIII of 1875 and since then, there have been further amendments and additions. As to this, see remarks in Chapter I.

2. The words "*for the local area*" after "*Revenue Authority*" were substituted for the words "of the Province" by Act X of 1901; see sec. 3(1).

3. This section was included in the Act, prior in date to the amendments, and additions, introduced by Act XI of 1899, and when introducing these amendments, the Legislature did not pay sufficient attention to the provisions already included.

4. Prior to the introduction of sec. 19I by Act XI of 1899, which now requires an affidavit of valuation, it was not the practice to give such details of assets, and in fact what was done was this, *viz.*, to disclose in the body of the petition, the assets likely to come to the petitioner's hands, together with an estimated value thereof. Details of debts, or liabilities, were not given. Duty was paid on the value of such assets *after* an order for grant was made. As regards debts, it was left to the executor, or administrator, to seek a refund of duty on debts paid afterwards and as to this see provisions of sec. 19*B* and notes thereunder.

5. The percentage of duty payable on the value of assets, as disclosed in the petition, was 2

per cent. on the gross value, and the sliding scale of fee was only introduced by Act VII of 1910.

6. The provisions of this section, as it stands, is, in one sense, only applicable to the then state of the law, and here it must be borne in mind that it is confined to the "*property of the deceased,*" in other words, to the assets. It being under sec. 19*B* that debts, or liabilities, were brought into account.

7. The procedure in regard to payment of duty has been completely altered by the introduction of Act XI of 1899, and VII of 1910, and in considering the provisions of this section, we should not deal with it exclusively, but read with it, the provisions of sec. 19*B* and also sec. 19*I*, and the form of affidavit. In other words, in dealing with the question of excess duty paid, *i.e.*, applying for a refund (secs. 19*A* and 19*B* refer to this) we must take into consideration, firstly, the gross value of assets, and deduct therefrom, the debts and liabilities, it being decided, as is indicated by cases already referred to, that it is only upon the value of the *net assets* that duty is payable.

8. Before discussing what in my opinion under the present, and existing state of the law, (owing to the amendments) is the proper procedure to follow as to adjustment, there are the following points to draw attention to.

(*a*). Sec. 19*A* speaks of the application having to be made within 6 *months* after the true value of the property has been ascertained, and the delivery of an Inventory verified by affidavit.

(*b*) Sec. 19*B* which deals with debts, speaks of 3 *years* after the date of grant, with a proviso for grant of further time, due to legal proceedings.

Having regard to the changes introduced into the law, by Acts XI of 1899, and VII of 1910, it is perhaps a little difficult to place an accurate meaning on this point, but seeing that duty is only payable on the *net assets,* I am inclined to the view, that the proper interpretation is, that the executor or administrator has *six months* from the date of his ascertaining the true value of the estate, to make the application for a refund.

9. DUTIES OF EXECUTORS AND ADMINISTRATORS TO ADJUST.—Every grant contains an undertaking by the grantee to file an Inventory within 6 months, or within such further time as may be allowed, and to render an account within 1 year (*secs.* 254, 255 *and* 277, *Succession Act and secs.* 76, 77 *and* 98, *Probate and Administration Act*) and certain penalties are provided. This undertaking is often overlooked by executors, and administrators. Then again there are the provisions of secs. 19*E* and 19*G* as to penalties, which are hereafter more fully dealt with.

10. PROCEDURE IN ADJUSTMENT FOR PURPOSE OF REFUND.—There is nothing in the Act dealing with this, except what is contained in secs. 19*A* and 19*B* read with 19*I*. Speaking however, from knowledge gained in the working of administration of estates, I venture to lay before the public, and the legal public, a mode of procedure which, if followed, would facilitate matters, not only for

executors, and administrators, but also for officers whose duty it is to deal with the matter. This procedure is indicated bearing in mind the provisions of the amendments introduced by Act XI of 1899 and Act VII of 1910.

(*a*) After administration has been completed, in so far as the realisation of assets, and payment of liabilities are concerned, and it appears that the *net assets* are less in value, than was disclosed originally, then a *refund* of duty on the excess value is claimable.

(*b*) To claim this refund an affidavit should be filed before the Chief Controlling Revenue Authority (for the local area) in which the probate, or letters, have been granted, setting out the following information :—

(1) The name of the deceased, the date of his death, the date of grant, and name of Court from which it was issued.

(2) The date of filing the original affidavit of valuation, and setting out in a Schedule, as shortly as possible, the particulars, and gross value of estate, and the debts disclosed showing the net value on which duty was paid.

(3) The amount of duty paid, and the scale on which it was paid, whether at 2 per cent., 2½ per cent., or 3 per cent.

(4) The amount or value of immovable and movable property realised, *i.e.*, value realised on sale, if sold, dividends, interest, income and rents

to be included up to date of grant. This could be done in a Schedule.

(5) The amount of debts paid, or provided for, and that they are all payable by law. This could be done in a Schedule.

(6) Statement as to net assets, *i.e.*, amount available, after deducting liabilities. This will show the amount on which duty is payable, or adjustable.

(7) Statement showing the amount refundable, and scale thereof.

(8) Statement that the application is made within *six months* from date of ascertaining the true value of the estate.

Here it may be added that property is not always sold, as they may be subject of bequests, etc. In such cases it is permissible to value at the same value as given in the original affidavit.

11. ADJUSTMENT IN SCALE.—Owing to the varying scale, it may be that a refund has to be claimed on the same scale, or a different scale to which it was paid. This should be clearly stated in the affidavit above referred to, and may be illustrated by examples.

(1) A applies for a grant and discloses in his affidavit filed under sec. 19*I* the net assets as Rs. 5,000; the duty would be at 2 per cent. On adjustment, the net assets work out at Rs. 3,000. Here the claim to refund would be at 2 per cent. on Rs. 2,000.

(2) The same principle would apply where the net assets were chargeable with $2\frac{1}{2}$ per cent. or 3 per cent.

(3) Suppose, however, A originally paid duty at 3 per cent. the net assets being disclosed at Rs. 60,000. Upon adjustment it turns out the net assets work out at Rs. 40,000, here the duty would only be at $2\frac{1}{2}$ per cent.; here the claim for refund would be for the difference on Rs. 20,000 at also the reduced percentage.

(4) The same principle would apply if duty had originally been paid at 3 per cent. or $2\frac{1}{2}$ per cent., and the net assets worked out to over Rs. 1,000, but under Rs. 10,000 in which case the duty would only be at 2 per cent.

(*The above results must follow from the decision in the goods of Mrs. H. T. Kerr*, 18 C. L. J. 308, 18 C. W. N. 121.)

12. NET ASSETS UNDER Rs. 1,000 OR ESTATE INSOLVENT.—If in working out the administration it transpires that the net assets prove to be less than Rs. 1,000 or the liabilities exceed the assets (Insolvency) then in either of these cases the entire duty originally paid is refundable. (*This follows from the decision in the goods of Quiningborough*, 22 C. L. J. 160) and see also notes to sec. 19, Clause VIII (*page* 126 *ante*).

It may often transpire that the net assets sometimes work out to a very little over Rs. 1,000, say, Rs. 1,006, or any figure under Rs. 1,020. In such case it may not, under existing circumstances, be

worth claiming a refund, as owing to fees payable on the affidavit, etc., the amount refundable may be less than the cost to be incurred.

13. SATISFACTION OF AUTHORITY.—Sec. 19*A* says "if such authority is satisfied" and sec. 19*B* says "to the satisfaction of such authority." The authority referred to, is presumably the Chief Controlling Revenue Authority, (for the local area) in which the grant has been made.

Although nothing is definitely stated, one must imply, from the above words, that the officer referred to, would have power to make enquiries, in order to satisfy himself, were he in doubt, and would be entitled to call for vouchers in support of payment of liabilities. Sec. 19*H* gives certain specific powers, but those appear to be limited to the affidavit of valuation, and I do not think the provisions thereof could be applied to an application for a refund.

Moreover, no procedure is indicated as to how an applicant could proceed, were the authority to decline to consider his application, or refuse it. To my mind, however, the applicant would have a right, in such a case, to move the Court, which issued the grant, and ask for a decision on the point.

Appendices A & B.

14. FORM OF AFFIDAVIT FOR REFUND.—Having indicated above a form of procedure, I attempt in Appendix A to give an idea as to a general form of affidavit and in Appendix B a form as to estates which work out as

under Rs. 1,000, or insolvent, which could be followed with such modifications as might be deemed necessary.

15. ADMINISTRATOR-GENERAL.—Inasmuch as this official is exempt from swearing an affidavit, an arrangement has been come to with the Revenue authorities, so far at any rate as Bengal is concerned, whereby he forwards a special form of certificate as to adjustment, and this form has been found to work satisfactorily in every respect.

The form at present adopted for a claim to refund is as follows:—

(*Form to be used in case of a refund.*)

Office of the Administrator-General of Bengal.

APPLICATION FOR ADJUSTMENT OF DUTY.

Estate

FROM

ADMINISTRATOR-GENERAL OF BENGAL,

To

THE SECRETARY TO THE BOARD OF REVENUE, LOWER PROVINCES.

With reference to Board of Revenue No. 6788*B*, dated the 2nd December, 1907, I, the undersigned, beg to submit herewith a statement showing particulars as to adjustment of duty in connection with this estate and the amount which has been found refundable is Rs. as per statement at foot.

I do hereby further certify that this application is made within six months from the date of ascertaining the true value of the estate.

Administrator-General of Bengal.

CALCUTTA :

The 19 .

STATEMENT.

1.	Value of immoveable property disclosed in petition ...	Rs.
2.	Value of moveable property disclosed in petition ...	,,
3.	Deduct value of debts as per petition	,,
4.	Balance on which duty was paid	,,
5.	Duty paid at the time of application ...	,,
6.	Value of immoveable property actually realised ...	,,
7.	Value of moveable property actually realised ...	,,
8.	Deduct debts against the estate and paid	,,
9.	Net value of estate on which duty adjusted ...	,,
10.	Amount of duty found refundable	,,

16. LAW IN ENGLAND AS TO ADJUSTMENT.—In England there are two forms in connection with what are termed "Corrective Affidavits," *viz.*, Forms D1 and D2. (*See* forms in use in England.)

17. Bearing in mind what is above stated, it seems to me clear that in introducing the amendments by Act XI of 1899, the Legislature did not give due consideration to this section, *viz.*, sec. 19A, and it is submitted that here is another point which requires reconsideration, and is perhaps another ground for a total revision of the law upon the subject.

No. 3, *Sec.* 19*B*.—WHENEVER IT IS PROVED TO THE SATISFACTION OF SUCH AUTHORITY THAT AN EXECUTOR OR ADMINISTRATOR HAS PAID DEBTS DUE FROM THE DECEASED TO SUCH AN AMOUNT AS, BEING DEDUCTED OUT OF THE AMOUNT OR VALUE OF THE ESTATE, REDUCES THE SAME TO A SUM WHICH, IF IT HAD BEEN THE WHOLE GROSS AMOUNT OR VALUE OF THE ESTATE, WOULD HAVE OCCASIONED A LESS COURT-FEE TO BE PAID ON THE PROBATE OR LETTERS OF ADMINISTRATION GRANTED IN RESPECT OF SUCH ESTATE THAN HAS BEEN ACTUALLY PAID THEREON UNDER THIS ACT, SUCH AUTHORITY MAY RETURN THE DIFFERENCE, PROVIDED THE SAME BE CLAIMED WITHIN THREE YEARS AFTER THE DATE OF SUCH PROBATE OR LETTERS. Relief where debts due from a deceased person have been paid out of his estate.

BUT WHEN, BY REASON OF ANY LEGAL PROCEEDING, THE DEBTS DUE FROM THE DECEASED HAVE NOT BEEN ASCERTAINED AND PAID, OR HIS EFFECTS HAVE NOT BEEN RECOVERED AND MADE AVAILABLE, AND IN CONSEQUENCE THEREOF THE EXECUTOR OR ADMINISTRATOR IS PREVENTED FROM CLAMING THE RETURN OF SUCH DIFFERENCE WITHIN THE SAID TERM OF THREE YEARS, THE SAID AUTHORITY MAY ALLOW SUCH FURTHER TIME FOR MAKING THE CLAIM AS MAY APPEAR TO BE REASONABLE UNDER THE CIRCUMSTANCES.

NOTES.—This section was in existence in the Act prior in date to the amendment introduced by Act XI of 1899, and the sliding scale introduced by Act VII of 1910.

Prior to the change in the law, it was not the practice, as pointed out in the note to sec. 19*A*, to deduct debts from the assets, in the petition, and

it was only the latter that was included in the petition. Under these circumstances therefore it became necessary to have some provision in the law, whereby an executor, or administrator, could claim a refund on account of debts and liabilities paid.

For reasons noted against the preceding section, this section should now be read with sections 19*A* and 19I, and the subject of refund treated as a whole.

As to procedure, form of affidavit, etc., see notes to previous section.

As to authorities regarding deduction of debts, see those referred to in Chapter I and also notes to Annexure B of the affidavit (*page* 104 *et seq. ante*).

Law in England.

As regards Probate Duty prior to the passing of the Act of 1881, duty was payable on the gross value, but an allowance, or return of duty, was made in respect of debts, upon presentation of vouchers, and an affidavit in support. The Act of 1881 allowed deduction of debts and the forms now provide for this, not only as to probate duty, when payable, but also as to estate duty which took the place of the former.

As to corrective affidavits, *see* forms D1 and D2 referred to in notes to sec. 19*A*.

Authorities.

In the case of *In the goods of Ram Chandra Ghose*, I. L. R., 24 Cal. 567, it was decided that the fact of there being an uncertainty as to recovery of a debt, is no ground for reducing

proportionately the fee payable, but in the case of *In the goods of Abdool Aziz*, I. L. R., 23 Cal. 577, it was held that when property is not reduced into possession, when probate is taken out, and the right to recover is subject to litigation, it is permissible to value it at less than Rs. 1,000. Against this there is the decision in *Saldanha* v. *Secretary of State for India*, I. L. R., 24 Mad. 241, that the fact of there being litigation does not in itself prevent the value of property from being assessed for purposes of duty.

(These were all decisions prior to the amending Act of 1899 *introducing the question of payment of duty and the affidavit of valuation.)*

Relief in case of several grants.

No. 4, *Sec.* 19*C*.—WHENEVER A GRANT OF PROBATE OR LETTERS OF ADMINISTRATION HAS BEEN OR IS MADE IN RESPECT OF THE WHOLE OF THE PROPERTY BELONGING TO AN ESTATE, AND THE FULL FEE CHARGEABLE UNDER THIS ACT HAS BEEN OR IS PAID THEREON, NO FEE SHALL BE CHARGEABLE UNDER THE SAME ACT WHEN A LIKE GRANT IS MADE IN RESPECT OF THE WHOLE OR ANY PART OF ALL THE SAME ESTATE.

WHENEVER SUCH A GRANT HAS BEEN OR IS MADE IN RESPECT OF ANY PROPERTY FORMING PART OF AN ESTATE, THE AMOUNT OF FEES THEN ACTUALLY PAID UNDER THIS ACT SHALL BE DEDUCTED WHEN A LIKE GRANT IS MADE IN RESPECT OF PROPERTY BELONGING TO THE SAME ESTATE, IDENTICAL WITH OR INCLUDING THE PROPERTY TO WHICH THE FORMER GRANT RELATES.

Notes and Cases under section 19*C*.

(1) The word "such" after "whenever" was repealed by the Repealing and Amending Act XII of 1891.

(2) This section was originally in the Act as framed by Act XIII of 1875.

(3) The effect of the section is merely this, *viz.*, that duty is not payable in the same estate on the same assets *twice*. In other words that portion of the estate which is, so to speak, taxable with duty can only be taxed *once* (but as to certificate *see Alamlammah* v. *Mudaliar*, I. L. R., 38 Mad. 988).

(4) The word "property" appearing in this section must be read as meaning the "net assets," as it is only such assets that are taxable, or liable to payment of duty (*vide* authorities previously referred to).

(5) The provision of this section is applicable to all nature of grants, full or limited in any way and also to grants where power is reserved to an executor, who has not originally proved. The following may be cited as examples :

(*a*) A dies leaving a will, appointing C and D executors. C proves the will. D is absent and power is reserved to him. On C's application duty is paid. D thereafter comes in and applies for a grant. Here no duty is payable on this second grant on the same assets.

(*b*) A limited grant issues to C such as during the minority of "X." At the time full duty is

paid. C's grant terminates when X attains majority, and X then applies. Here no duty is payable on the second grant.

(*c*) A dies leaving a will appointing B executor. D files a caveat before B applies. B then applies and the matter is set down as a contentious cause and E is appointed administrator *pendente lite;* the duty must be paid before such grant can issue to E. In proceedings probate is ordered to issue to B. Here B is exempt from paying duty.

Note as to this point see also remarks appearing at page 17 *et seq. ante.*

(*Here it may be pointed out that where an Administrator* pendente lite *is appointed he is entitled to pay the duty out of the assets of the estate or sometimes power is given him to borrow money to pay such duty.*)

(*d*) A applies for a grant to the estate of "B" on the allegation he is the next of kin and pays the duty *out of the assets.* It thereafter transpires he is not entitled to the grant and it is revoked. Thereafter a fresh grant issues to the proper person. Here such person is entitled to the grant without payment of duty on the same assets.

(This point arose in the well-known case of the Craster fraud. There the duty was paid out of the assets by the person who first obtained the grant, and this was revoked on discovery of the fraud and a fresh grant made to the Administrator-General of Bengal. This fraud led to the well-known cases of *Debendra Nath Dutt* v. *Administrator-General*, I. L. R., 31 Cal. 33 713, 9 C. W. N. 49, *Craster* v. *Thomas*, 1909, 2 Ch. 348.)

A similar point arose in the case of *In the goods of Lee* (*unreported*) where there was also a grant obtained by fraud and a subsequent grant to the Administrator-General.

(*For further particulars, see Law relating to Administrators-General and Official Trustees in India.*)

(*e*) The point also arises where a person applies for a grant, and fails to give security. Thereafter an order is made for grant to issue to the Administrator-General, that official is exempt from paying duty again, but an order is made authorising the use of the stamped paper already filed by the first applicant and should he have paid the duty out of funds belonging to himself he is entitled to have same refunded to him out of the estate. (*See sec.* 13, *Act III*, 1913.)

(6) IS AN AFFIDAVIT OF VALUATION NECESSSARY FOR A SECOND GRANT? Before the introduction of sec. 19I no affidavit was necessary, but that section makes no difference between a first, second, or any other application, and in clear and plain words enacts that *no* order shall be made until such affidavit has been filed. It is, therefore, clear to my mind that *every* applicant, even though it be for a second, or any further grant, must file this affidavit. In order, therefore, to claim the privilege, or exemption given by this section, the applicant for the further grant must show that the assets are the same, or that they represent the proceeds, or investments, of the original assets. Every applicant for a second grant is entitled to refer to

the original proceedings to support his application, and if the first application has been properly drawn (*vide* sample affidavit) and proper accounts have been kept, there should be no difficulty in identifying the assets existing at the time of the second, or subsequent application, with the assets originally disclosed.

In regard, however, to applications for a second, or subsequent grant, or a grant after failure to give security, an Administrator-General would be exempt from swearing any affidavit. He would, however, have to show that no duty is payable, and produce the usual certificate of exemption.

(7) DELIVERING UP OF FORMER GRANT.—Where a grant has been revoked under the provisions of the Indian Succession Act, sec. 234, or Probate and Administration Act, sec. 50, or where the first grant has come to an end, it should be delivered up if available on the application for the second grant (*see sec.* 333, *Succession Act and sec.* 157, *Probate and Administration Act*).

(8) FORM OF AFFIDAVIT.—There is no special form of affidavit laid down for second or subsequent grants, but it is submitted that the proper course is to modify the statements contained in the form given, to meet the requirements of the case. This can be done having regard to the words used in the heading, *viz.*, (*To be used with such modification, if any, as may be necessary*). The paragraphs should refer to the former grant, etc.

As to forms of petitions for subsequent grants, see forms set out in *Handbook of Administration Law in India by the writer.*

(9) LAW IN ENGLAND.—In England there is a separate form of affidavit for use, where an application is made for a second, or subsequent representation, where the estate was not within the operation of the previous grant, in which case the appropriate form of affidavit as for an original grant should be used (*see* Form A5 in use in England).

(10) NECESSITY FOR REVISION.—Having regard to points previously pointed out, it seems to me that the provisions of this section also requires reconsideration, and in any future legislation I would advocate special sections being framed dealing with *de bonis non* grants, or grants following limited grants, and also special forms of affidavits in connection with such applications.

(11) AUTHORITIES UNDER SEC. 19*C*.—*Goods of Bibee Ameerun*, 15 W. R. 496. Here it was held that the first probate enures for the benefit of all the executors, and that no duty is payable on probate granted to a second executor, to whom leave was reserved when the first probate was granted.

Goods of Lt.-Genl. Peter Innes, 16 W. R. 253. Here a grant was made to a creditor, without notice to the Administrator-General, and that official applied, and the grant was cancelled. On the original grant a sum of Rs. 200 was paid as duty, and it was held, on a reference, that where duty

had been paid on a portion of the property under a grant which was valid until revoked, that in determining duty on the new grant, credit should be given for the amount of duty which had already been paid and such duty was not payable a second time.

Goods of W. G. Chalmers, 21 W. R. 246, 6 B. L. R. Ap. 137. Here a limited grant was made in 1869 before the Court Fees Act, and a fee of Rs. 10 was paid. The will was subsequently proved, and the Administrator-General applied for exemption of payment of duty, as the Court Fees Act had come into force subsequent to the first grant. It was held that the fee fixed by the Court Fees Act was payable.

Goods of W. P. Mason, 6 B. L. R. Ap. 139, 16 W. R. 253. Here the Administrator-General obtained a grant with copy of an exemplification, and the full duty was paid. Thereafter a further document was produced, and a fresh grant was asked for, incorporating this document, and it was held that only one duty was payable.

Goods of Gladstone, I. L. R., 1 Cal. 169. Here the testator was a member of a firm in Calcutta, G. A. & Co., and O. G. & Co., of Liverpool. He died in England leaving a will of which he appointed G in England and O in Calcutta executors. As a partner in the Calcutta firm he was entitled to a share in an indigo concern and certain properties in Calcutta and his share on his death was paid by the firm in Liverpool and duty was paid

in England. After his death a contract was entered into to sell the indigo concern and his name appearing on the deeds, O applied for probate to enable him to join in the conveyance and in any future sale of other properties. An unlimited grant was made to O, who claimed exemption from duty on the ground (*a*) that duty had been paid in England, and (*b*) there was no amount or value in respect of which probate was to be granted in India. On a reference it was held O was not entitled to exemption in respect of the properties. (*See* judgment at page 173.)

In re Gasper, I. L. R. 3 Cal. 733. Here it was held that executors in obtaining a second grant, after the passing of the Act, were not exempt from paying duty under the Act, although the full fee then chargeable by law, had been paid at the time of the first grant.

In re Murch, I. L. R. 4 Cal. 725. The testator died in England, and his will was proved in England, and then in India, and duty was paid in each country. On the death of the executrix, an application was made for a *de bonis non* grant by the Administrator-General, of the unadministered assets, which was valued at a greater value than the sum on which duty was paid, but which sum was made up of assets from England on which duty was paid there. It was held that as the assets were within the jurisdiction at the time of the grant, and the Administrator-General could not obtain possession otherwise than by virtue of his

grant, they were liable to duty, and that section 19*C* had no application to the case. (*See* judgment at page 726.)

(*But see* I. L. R. 21 Bom. 673.)

In the goods of Sir Albert A. D. Sassoon, I. L. R. 21 Bom. 673. In this case the question arose as to whether the interest of the deceased in the firm of David Sassoon & Co. was liable to duty. The petition, amongst other statements, contained the statement that all partners had ceased to reside in India, and that the head-quarters were in London, and that the value of the deceased's interest had been treated as part of the English estate and that it had been held the deceased was domiciled in England, and duty had been paid in England on that footing. (*See* paras. 9 to 17 of the petition as set out in the case.) The Registrar was of opinion that duty was payable on the firm's property in India, leaving the executor to obtain a refund and the question was deferred under sec. 5. After a careful consideration of the whole question it was held *inter alia*

(*a*) That London was the locality in which the business, which is the property of the partnership, was situated.

(*b*) That upon the facts as disclosed in the evidence, no duty was payable in India. (*See* judgment at pages 675—680.)

Goods of Ezekiel Joshua Abraham, I. L. R. 21 Bom. 139. Here the petition disclosed assets

estimated at Rs. 10,06,892-5-8, and out of this amount Rs. 4,29,415-5-8 was estimated as value of property in Bombay, Rs. 5,16,477 as remittances expected from Shanghai, and balance Rs. 61,000 was money remitted after the death from Shanghai, and it was submitted that duty could not be charged on two latter sums as being outside jurisdiction at the time of death. The Registrar having regard to sec. 244 of Act X of 1865 and Schedule I, Art. II Court Fees Act was of opinion duty was payable. It was held that duty was payable only on assets which at the date of death were in British India. (*See* judgment at page 142 and the English cases referred to.)

In the case of *In re Samuel Balthazar*, 4 Lower Burmah Rulings, p. 255, it was held that where letters of administration had been granted in respect of the *whole property* and full duty had been paid thereon, no further duty was chargeable on a subsequent grant under sec. 229, Succession Act, in respect of the unadministered assets, although the value of the property may have increased in the meantime.

Srimati Swarnamoyee Debi v. *Secy. of State*, 30 Ind. Cases 394; 22 C. L. J. 370; I. L. R. 43 Cal. 625.

Here it was held as follows :—

(*b*) That in England under sec. 3, 41 Geo., Ch. 86, all second and subsequent grants in respect of property on which full duty has been paid previously are exempt from further duty.

(*b*) That where in a *de bonis non* grant there is no new succession, or new devolution of the estate, no fresh duty is payable.

(*c*) That once duty has been paid in accordance with the scale then in force, no further duty can be levied on a second grant even if the scale has in meantime been revised or raised.

(*d*) That "what constitutes" *the full fee chargeable under this Act* must be determined by the point of time when the grant is made, and not with reference to the point of time of the second grant.

(*e*) That the intention of the Legislature was that when the full fee chargeable was paid at the time of the grant no further fee should be charged when a second grant is made in respect of that property as comprised in that estate.

Probates declared valid as to trust property though not covered by court-fee.

No. 5, *Sec.* 19*D.*—THE PROBATE OF THE WILL OR THE LETTERS OF ADMINISTRATION OF THE EFFECTS OF ANY PERSON DECEASED HERETOFORE OR HEREAFTER GRANTED SHALL BE DEEMED VALID AND AVAILABLE BY HIS EXECUTORS OR ADMINISTRATORS FOR RECOVERING, TRANSFERRING OR ASSIGNING ANY MOVEABLE OR IMMOVEABLE PROPERTY WHEREOF OR WHERETO THE DECEASED WAS POSSESSED OR ENTITLED, EITHER WHOLLY OR PARTIALLY AS A TRUSTEE, NOTWITHSTANDING THE AMOUNT OR VALUE OF SUCH PROPERTY IS NOT INCLUDED IN THE AMOUNT OR VALUE OF THE ESTATE IN RESPECT OF WHICH A COURT-FEE WAS PAID ON SUCH PROBATE OR LETTERS OF ADMINISTRATION.

Notes and Cases under Sec. 19*D.*

1. This section was incorporated in the Act prior to the amendments introduced by Act XI of 1899 and Act VII of 1910.

2. It is not quite clear to my mind, why the section was worded as it is. It in so many words declares that grants shall be valid for recovering, and transferring property due to, or held by the deceased, as trustee, although not included in the amount or value of the estate in respect of which a Court fee was paid (*i.e.*, duty).

It is laid down by the Testamentary law that a grant is conclusive evidence of the grantee's title (*vide section* 242, *Indian Succession Act and section* 59, *Probate and Administration Act*). The section really means this—that where a person holds property as trustee, or property is due to him as trustee—his executor, or administrator, can transfer or recover, although it was not included as property belonging to the deceased. Now as a matter of fact prior to the amendment introduced by Act XI of 1899, property held as trustee was not included as an asset, and from experience gained any such property was not disclosed as an asset, except in certain exceptional cases, and where it was so disclosed exemption from duty was claimed. Since the introduction of the affidavit of valuation, trust property is disclosed under the heading. Property held in trust not beneficially or with a general power to confer a beneficial interest (*vide* notes and remarks at page 109 *et seq. ante*).

Where property is held by a deceased as Trustees, or is due to him as Trustee, there are other methods of transferring, or recovering, or vesting such property, in a new trustee. This can be done by the appointment of a New Trustee or Trustees, either under the provisions of any deed or will, or by an order of Court under the Trustees Act, or under the Official Trustee's Act.

This section, however, to my mind, is meant to cover that class of cases, where it becomes necessary for an executor, or administrator, of a deceased Trustee, to deal with property. Under the Indian Succession Act, and Probate and Administration Act, (*vide* section 179 and section 4), all property held by the deceased vests in his executor, or administrator *as such*, but this does not always mean such executor, or administrator, is entitled to deal with it, as it may be that property, though standing in the name of a deceased, is not his, but only held, by him as Trustee, and his executor or administrator may not only be precluded from dealing with it, but he may decline to mix himself up with matters that do not, in one sense, concern the estate he represents.

As previously pointed out, Companies are not bound to recognise trusts, and in the majority of cases, where shares are held by a deceased as Trustee, they are registered in his own name, and in such cases representation is necessary before a transfer can be carried out, and it is often

necessary in such cases, for a special grant to be obtained, or for the executor, or administrator, to include such assets and treat them as trust property.

Every case, where property is held by a deceased as Trustee, must be judged on its own merits, in regard, not only, to the proper method of dealing with it, but also in regard to exemption from payment of duty, where such exemption is claimed on this ground, and in this connection one has often to consider the case of joint family property, and property held by a deceased as a Shebait or a Mutwali, etc.

3. Question of Exemption.

To my mind the sole question arising is this: Is the property in respect of which exemption is claimed trust property or not? If it is, then it seems to me, exemption can be claimed. I am unable to follow the reasons for the decision given in the case of *Collector of Ahmedabad* v. *Sauchand*, I. L. R., 27 Bom. 140 (*hereafter referred to*) and in which case a refund was claimed after payment, and issue of the grant. It will be noted that this case was not followed in the latter case of *Collector of Kaira* v. *Chunilal Hari Lal*, I. L. R., 29 Bom. 161 (*hereafter referred to*) which also adopted the ruling in the case of *In the Goods of Pokurmull Augurwallah*, I. L. R., 23 Cal. 980 and 1 C. W. N. 31 (*also hereafter referred to*). These cases again were not followed in the case of *In re Desy Manavala*

Chetty, I. L. R., 33 Mad. 93, and *see also Kashinath Parsharam Gadgel* v. *Gouravabai*, I. L. R., 39 Bom. 245, where previous cases are referred to, and dealt with. These latter two cases, however, appear to have been decided upon a different point, *viz.*, as to how the deceased himself dealt with the property, and on that ground alone, there seems to be great force in disallowing exemption, but it all seems to revert to the first point raised, *viz.*, is it or is it not trust property? and to decide this the Court is entitled to consider the method of dealing by the deceased even by his will.

As regards authorities from time to time decided in dealing with the subject of trust property, attention is directed to the following :—

Goods of Jaymonee Dassee, 14 B. L. R., 184. Here a Hindu lady died, having succeeded to her father's property for the estate of a Hindu daughter, and it appeared certain Government Promissory Notes, which formed a portion of the father's property, stood in her own name. The sons of the daughter, applied for administration to her estate, and it was held, in regard to payment of duty, that on her death the grandfather's (her father's) estate became in the hands of her (daughter's) representatives *trust property* in respect of which no duty was payable under the Court Fees Act.

Goods of Olivia H. George, 15 W. R. 457 N. Here one T conveyed property to L on trust to pay income to T for life, and after her death, to hold same upon trust for her children, in such

manner as she should by will appoint. T thereafter married one G and thereafter made a will appointing her husband and L her executors. They applied for probate and claimed exemption, and it was held the fee was not payable in respect of such *trust property*.

Goods of Bindaban Ghose, 19 W. R. 230, 11 B. L. R. 39. In this case A and B were brothers, and joint in estate. B obtained an order for administration to the estate of A, consisting of certain securities, etc., and the question submitted was, as the grant would enable B to deal with the entire estate, whether B's half share was to be treated as trust property, and the resolution No. 2004, dated 14th July, 1871, issued under section 35 was referred to. The Court held that B's half share should be treated as trust property, and it should be exempted.

Goods of Pokurmull Augurwallah, I. L. R., 23 Cal. 980, 1 C. W. N. 31. This was a reference. The deceased was a member of a joint Hindu family, governed by Mitakshara Law. He left a will of which he appointed his brothers, executors and trustees. Exemption was claimed from duty, on the ground that the property was joint ancestral property, and would pass by survivorship. It was stated in the petition, that the testator, with his brothers, had purchased out of joint funds, plots of land from the Corporation, as tenants in common,

and that the effect of this was to vest the undivided $\frac{1}{4}$ share in the testator, which on his death, would pass to his legal representatives.

It was held, that though the property was conveyed as tenants in common, the property vested in them as trustees for the benefit of the co-parceners and no duty was payable. (*See* reference and judgment.)

Collector of Ahmedabad v. *Sauchand*, I. L. R., 27 Bom. 140. Here a Hindu died, leaving two sons, who were joint with him, and portion of the estate consisted of deposits. Duty was paid, and an application was thereafter made for a refund, on the ground it was joint property, and passed by survivorship. It was held that the refund could not be granted, and that the section only applied, where a grant had already been granted on which the fee had been paid. In such cases no further duty is payable, in respect of property held by the deceased as trustee.

It was held in this case that no grant was necessary, and that the property vested by survivorship, but as a grant had been applied for and having invoked the jurisdiction of the Court, the applicant could not be allowed to say the statement was incorrect and that no grant was necessary (but *see* I. L. R., 29 Bom. 161).

Collector of Kaira v. *Chunilal Harilal*, I. L. R., 29 Bom. 161, 6 B. L. R. 652. The deceased died, possessed of certain shares in Joint Stock Companies, and in the Bank of Bombay, standing in

his name as registered holder. He left three sons who applied for administration, limited to one share only, and this was granted. Thereafter they applied as regards the remaining, and claimed exemption from duty on the ground it was joint and it was held—

(*a*) that the property being joint, exemption was granted;

(*b*) that exemption of trust estates, from payment of duty, is not conditional on the circumstance that there had been a previous grant, on which fee had been paid. The exemption has reference to the character of the property, and not to the procedure adopted. I. L. R., 23 Cal. 980 followed; I. L. R., 27 Bom. 140 disapproved. (*See judgment at p.* 165, *and also cases referred to.*)

In re Desy Manavala Chetty, I. L. R., 33 Mad. 93, 19 M. L. J. 591.

It was held in this case—

(*a*) That as under Mitakshara Law an undivided co-parcener has power to mortgage, or alienate his undivided share, and he can at any time enforce partition. He cannot be said to hold his own share of the undivided property, as trust property not beneficially, or with general power to confer a beneficial interest in it, within the meaning of these words as used in Annexure B, in Schedule III to the Act, although as to shares of others, he may be said to so hold them.

(*b*) Where a surviving co-parcener applies for a grant in respect of the property standing in the

name of a deceased co-parcener, which was joint of the applicant and the deceased, he must include in the valuation the value of the share to which the deceased was entitled, and he cannot under 19*I* (1) obtain administration to the joint property unless he includes such share in the valuation and pays the duty. (I. L. R., 23 Cal. 980 and I. L. R., 29 Bom. 161 not followed.) *See* judgment at p. 94.

Goods of Frouchman, I. L. R., 20 Cal. 575. Here the deceased F, a subject of the German Empire, died. He married a lady of Solingen in Rhenish Prussia, where the Code Napoleon is in force. There, in contemplation of the marriage, the parties entered into a contract whereby it was provided "there should be and rule universal community of his and her present and future property" which contract placed the parties, under the law of France, respecting community of property, between husband and wife. Under that law a husband and wife have an equal interest in the property compirsed in the community, and on the death of either, the property is divided into two parts, of which one goes to the survivor, and the other to the heirs, or donees, under a testamentary disposition.

It was held that on the death of F only *one-half* of the property was liable to duty, the other half being *trust* property, which should under the provisions of sec. 19*D* be exempt from payment of duty.

(2) *Kashinath Parsharam Gadgel* v. *Gouravabai*, I. L. R., 39 Bom. 245.

This was a case dealing with the exemption of payment of duty. The petitioner's case was that the deceased, and her minor son, were members of a joint family and he claimed exemption under Clause 19*B* of the Court Fees Act, and the case of *Collector of Kaira* v. *Chunilal*, I. L. R., 29 Bom., 161, was relied on. The application was for probate. It was held, that where the exemption was for probate, the parties claiming under the Will, could not go behind its terms, or claim any exemption whatsoever, upon allegations utterly inconsistent, not only with the fact of the Will itself, but with the express statements made therein, and that the Executor must pay full probate duty. The following were referred to. *Collector of Kaira* v. *Chunilal*, I. L. R., 29 Bom., 161; *Collector of Ahmedabad* v. *Sauchand*, I. L. R., 27 Bom., 140; *Goods of Pokurmull Augurwallah*, I. L. R., 23 Cal., 980, s.c. 1 C. W. N., 31; *In re Desai Manvala Chetty*, I. L. R., 33 Mad., 93; *Ram Chandra* v. *Damodhar*, I. L. R., 20 Bom., 467; *Bank of Bombay* v. *Ambalal Sarabha*, I. L. R., 24 Bom., 350.

Chandrabali Kuar v. *Collector of Durbanga*, 2 Patna L. J. 611. Here it was held the trusts referred to in item 4, annexure 13, are trusts held beneficially by testator during his lifetime and not trusts created by will. *I. L. R.* 3 *Cal.* 736 *not followed.* 18 *C. W. N.* 121 *distinguished* 18 *W. R.* 153 *and* 41 *Cal.* 556, *referred to.*

No. 6, *Section* 19*E*.

19*E*. WHERE ANY PERSON ON APPLYING FOR PROBATE OR LETTERS OF ADMINISTRATION HAS ESTIMATED THE ESTATE OF THE DECEASED TO BE OF LESS VALUE THAN THE SAME HAS AFTERWARDS PROVED TO BE, AND HAS IN CONSEQUENCE PAID TOO LOW A COURT-FEE THEREON, THE CHIEF CONTROLLING REVENUE-AUTHORITY (FOR THE LOCAL AREA) IN WHICH THE PROBATE OR LETTERS HAS OR HAVE BEEN GRANTED MAY, ON THE VALUE OF THE ESTATE OF THE DECEASED BEING VERIFIED BY AFFIDAVIT OR AFFIRMATION, CAUSE THE PROBATE OR LETTERS OF ADMINISTRATION TO BE DULY STAMPED ON PAYMENT OF THE FULL COURT-FEE WHICH OUGHT TO HAVE BEEN ORIGINALLY PAID THEREON IN RESPECT OF SUCH VALUE AND OF THE FURTHER PENALTY, IF THE PROBATE OR LETTERS IS OR ARE PRODUCED WITHIN ONE YEAR FROM THE DATE OF THE GRANT, OF FIVE TIMES, OR, IF IT OR THEY IS OR ARE PRODUCED AFTER ONE YEAR FROM SUCH DATE, OF TWENTY TIMES, SUCH PROPER COURT-FEE, WITHOUT ANY DEDUCTION OF THE COURT-FEE, ORIGINALLY PAID ON SUCH PROBATE OR LETTERS : Provision for case where too low a court-fee has been paid on probates, etc.

PROVIDED THAT, IF THE APPLICATION BE MADE WITHIN SIX MONTHS AFTER THE ASCERTAINMENT OF THE TRUE VALUE OF THE ESTATE AND THE DISCOVERY THAT TOO LOW A COURT-FEE WAS AT FIRST PAID ON THE PROBATE OR LETTERS, AND IF THE SAID AUTHORITY IS SATISFIED THAT SUCH FEE WAS PAID IN CONSEQUENCE OF A MISTAKE OR OF ITS NOT BEING KNOWN AT THE TIME THAT SOME PARTICULAR PART OF THE ESTATE BELONGED TO THE DECEASED, AND

WITHOUT ANY INTENTION OF FRAUD OR TO DELAY THE PAYMENT OF THE PROPER COURT-FEE, THE SAID AUTHORITY MAY REMIT THE SAID PENALTY, AND CAUSE THE PROBATE OR LETTERS TO BE DULY STAMPED ON PAYMENT ONLY OF THE SUM WANTING TO MAKE UP THE FEE WHICH SHOULD HAVE BEEN AT FIRST PAID THEREON.

Notes to section 19*E*.

1. The words "*for the local area*" were substituted for the words "*of the province*" by sec. 3 (1) of Act X of 1901.

2. Under notification No. 1522 dated 20th March, 1885, I. G. the Government directed that the additional Court-fee payable under sec. 19*E* shall be levied either

(*a*) by impressed and adhesive stamps in manner prescribed by Notification No. 361 of 18th April, 1883, or

(*b*) Wholly by adhesive stamps of the kind described in clause 1, Notification No. 361 of 18th April, 1883.

See note to secs. 25 *and* 26 *post.*

3. Here attention is directed to sec. 20, Act VI of 1899, which principally dealt with amendments to the Indian Succession, and Probate and Administration Acts. The section which was subsequently repealed by sec. 4 Act XI of 1899, and which added sec. 19*J post*, was as follows:—

Sec. 20(1). *Any penalty or forfeiture under sec.* 19*G or sec.* 19*H of the Court Fees Act*, 1870,

may on the certificate of the Chief Controlling Revenue authority be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of British India.

(2) *The Chief Revenue authority may remit the whole or any such penalty or forfeiture or any further penalty payable under sec.* 19*E of the said Act.*

4. The section of the present Act which deals with penalties is sec. 19*G* and the one relating to recovery of penalties is sec. 19*J*. *See remarks under these sections hereafter.*

(5) This section, as distinguished from secs. 19*A*, and 19*B*, relates to payment of excess duty when it becomes payable, and it was incorporated in the Act, prior to the amendments introduced by Acts XI of 1899 and VII of 1910.

As previously pointed out, not only does every executor, and administrator, give an undertaking to file an inventory, and an account, but there is a duty cast upon every executor, and administrator, to adjust duty—this duty is more often overlooked than not—and executors, and administrators, perhaps in this respect, overlook the penalties imposed, not only by the Succession Act, Probate and Administration Act, but also by this Act.

(6) The provisions of this section like secs. 19*A* and 19*B* must now be read with the

provisions of sec. 19*I* and the affidavit of valuation.

(7) *Procedure to be adopted in adjusting duty in order to pay excess duty payable.*—There is no procedure laid down in the Act, but this section speaks of the value being verified by affidavit or affirmation.

The original affidavit of valuation, now required to be filed, before an application for a grant can be made, cannot always with accuracy specify the entire list of assets, or liabilities, or the value thereof, and it often occurs that assets are realised which only come to knowledge after the grant, or it may be that assets, such as debts, which were treated as irrecoverable, or bad, are realised or paid in, or that an increased value is realised on sale. On the other hand liabilities may come in which were not known of. I venture under sec. 19*A* to lay down a procedure as to claiming a refund and I now venture to lay down a procedure in regard to payment of excess as follows :—

(*a*) After administration has been completed, in so far as the realisation of assets, and payment of liabilities are concerned, and it appears that the *net* assets *exceed* in value the net assets as originally disclosed, the additional duty becomes payable on the excess.

(*b*) To deal with the question of payment of the excess duty on the additional or, excess assets, an affidavit should be filed before the Chief Controlling Revenue Authority (for the local area) in

which probate or letters have been granted, setting out the following information:—

1. The name of the deceased, date of death, date of grant, and name of Court which issued same.

2. The date of filing the original affidavit of valuation, and setting out in a Schedule, as shortly as possible, the particulars and gross value of the estate and debts disclosed, showing the net value on which duty was paid.

3. The amount of duty paid, and the scale on which it was paid, whether at 2 per cent., $2\frac{1}{2}$ per cent. or 3 per cent.

4. The amount or value of assets realised, including dividends, interest, income and rents up to date of grant—this could be done in a Schedule.

5. The amounts of debts paid as provided for, and that they are all payable by law—this could be done in a Schedule.

6. Statement as to net assets, *i.e.*, amount available, after deducting liabilities—this will show the amount on which duty is payable.

7. Statement showing the amount of duty actually payable on adjustment, after giving credit for amount previously paid, and as to scale on which it is movable.

8. A statement that the application is made within *six months* from date of ascertaining the true value of the estate.

It is not of course always that property is sold in course of administration, as they may

be subjects of bequests, etc. If not sold it is permissible to value same at the same rate and valuation on which duty was originally paid.

8. *Adjustment in Scale.*—Owing to the varying scale introduced by Act XII of 1910, it may be that the scale payable on adjustment is not the same as originally paid, and this should be clearly shown in the affidavit. The point may be best illustrated by examples :—

(*a*) In the original affidavit A discloses the net assets as Rs. 6,000; here the duty would be at 2 per cent. On adjustment, however, the net assets are in fact over Rs. 10,000, but under Rs. 50,000; here the duty would be at 2½ per cent., this excess would have to be paid.

(*b*) Originally the net assets disclosed are in value Rs. 49,000, here the duty would be at 2½ per cent. On adjustment they are Rs. 51,000 (or over Rs. 50,000), here the duty would be at 3 per cent. and this would have to be paid.

9. *Estates under Rs.* 1,000 *in Value.*—If the net assets are under Rs. 1,000 no duty is payable, but if it turns out that the net assets realise over Rs. 1,000 then duty is payable, and in this connection it must be borne in mind that it does not matter whether it is only Rs. 5 or Rs. 1,000 or any other figure over the Rs. 1,000. This excess duty, whatever it may be, becomes payable in law.

10. *Law in England as to Adjustment.*—In England there are two forms relating to

"Corrective Affidavits," *viz.*, forms D1 and D2 as in use in England.

11. *Time within which Application to be made.*—This section is rather confused on this point. The first portion of the section speaks of a penalty *of 5 times the duty*, if the grant is produced within 1 year from date thereof, *and* 20 *times* if produced after. The proviso, however, deals with power to remit the penalty, if the application is made within *six months* from ascertaining the true value of the estate.

I have not traced any decision in which this section has been construed, but reading it with other sections, such as 19*A*, 19*B*, 19*G*, 19*H* and 19*I* the interpretation I give thereto is that no penalty can be imposed, if the application is made within 6 *months from the time of ascertaining the true value of the estate.* Attention is here also directed to the provisions of sec. 19*G*.

12. *Satisfaction of Authority.*—It will be noted that the words "*if the said authority is satisfied*" do not appear in the first portion of section, but they appear in the proviso, which is limited to the remission of the penalties referred to in the first part. It seems to me however that the authority would have the same right of enquiry as he possesses under secs. 19*A* and 19*B*.

13. *Form of Affidavit.*—Having indicated above a form of procedure, I attempt in Appendix "C" to give a form of affidavit to be followed in regard to where duty was originally paid and

in Appendix "D," a form where duty was not originally paid.

14. *Administrator-General.*—For same reasons as stated under sec. 19*A* a special form of certificate has been adopted in Bengal.

The form at present adopted in paying additional duty is as follows :—

(Form to be used where additional duty is payable.)

OFFICE OF THE ADMINISTRATOR-GENERAL OF BENGAL.

APPLICATION FOR ADJUSTMENT OF DUTY.

Estate

FROM

ADMINISTRATOR-GENERAL OF BENGAL,

TO

THE SECRETARY TO THE BOARD OF REVENUE, LOWER PROVINCES.

With reference to Board of Revenue No. 6788 B, dated the 2nd December, 1907, I, the undersigned, beg to submit herewith a statement showing particulars as to adjustment of duty in connection with this estate and the amount now payable in excess is Rs.
as per statement at foot.

I do hereby further certify that this application is made within six months from the

date of ascertaining the true value of the estate.

Administrator-General of Bengal.

CALCUTTA :

The *190* .

STATEMENT.

1.	Value of immoveable property disclosed in petition ...	Rs.
2.	Value of moveable property disclosed in petition ...	,,
3.	Deduct value of debts as per petition	,,
4.	Balance on which duty was paid	,,
5.	Duty paid at the time of application	,,
6.	Value of immoveable property actually realised ...	,,
7.	Value of moveable property actually realised ...	,,
8.	Deduct debts against the estate and paid ...	,,
9.	Net value of estate on which duty adjusted ...	,,
10.	Amount of duty now payable	,,

15. Authorities under sec. 19*E*.

In the case of *Manekji Edulji* v. *Secretary of State for India*, Bombay printed judgment, 1896, p. 751, it is stated that the section applies to applications by persons who have taken out the grant and sec. 19*G* provides a penalty where too low a Court-Fee has been paid. Further that the duty of determining whether too low a Court-Fee is paid is imposed on the Revenue Authority and a Civil Court has not the power of revising his deci-

sion on the point and ordering the penalty to be refunded if it finds his decision wrong.

(This decision was given before the amendments introduced by Act XI of 1899.)

Nikunjurani Chaudhuran v. *Secy. of State*, 22 C. L. J. 375, 20 C. W. N. 504, suit is maintainable by Secretary of State to recover penalty lawfully imposed under section, but Court has no jurisdiction to review decision of revenue authority. Also that section contemplates application on part of person who has taken out probate, and if estimated value is less than value afterwards proved where there is no determination of value of probate Court the section does not apply.

16. Having regard to what is hereinbefore stated, it seems to me that this section also requires reconsideration.

No. 17, *Section* 19*F*.

Appendix C & D. Administrator to give proper security before letters stamped under section 19*E*.

19*F*. IN CASE OF LETTERS OF ADMINISTRATION ON WHICH TOO LOW A COURT-FEE HAS BEEN PAID AT FIRST, THE SAID AUTHORITY SHALL NOT CAUSE THE SAME TO BE DULY STAMPED IN MANNER AFORESAID UNTIL THE ADMINISTRATOR HAS GIVEN SUCH SECURITY TO THE COURT BY WHICH THE LETTERS OF ADMINISTRATION HAVE BEEN GRANTED AS OUGHT BY LAW TO HAVE BEEN GIVEN ON THE GRANTING THEREOF IN CASE THE FULL VALUE OF THE ESTATE OF THE DECEASED HAD BEEN THEN ASCERTAINED.

Notes to Sec. 19*F*.

1. Regarding the question of Bonds by an administrator, see sec. 256, Indian Succession Act,

and notes thereunder (*Henderson's Testamentary and Intestate Succession*). *See also sec.* 78 *Probate and Administration Act*, 1881 (2nd edition, by Alex. Kinney).

2. It is rather difficult to follow the reason for this section. The final adjustment is really made upon completion of administration, and this duty is paid to the Revenue Authority, whereas the Bond is given to the Court. It is not clear to me how the Bond can be given, until it has been ascertained exactly the amount of the *excess* assets. Security is given for the due administration of the estate, and here if this section were strictly followed, the additional security would be given *after* completion of the administration. Sureties as a rule are sureties so long as the administration continues.

Nothing is stated in the section how the Revenue Authority is to satisfy himself that the additional Bond has been given; nor is it stated what is the procedure to be adopted if the sureties, or either of them have died since the grant. Would additional sureties have to be obtained merely for the excess assets?

Again, does this section in any way alter, diminish or enhance the liabilities of the sureties? It seems to me that it cannot do so, and that the sureties remain liable for any mal-administration.

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of under-payment.

19*G*. WHERE TOO LOW A COURT-FEE HAS BEEN PAID ON ANY PROBATE OR LETTERS OF ADMINISTRATION IN CONSEQUENCE OF ANY MISTAKE, OR OF ITS NOT BEING KNOWN AT THE TIME THAT SOME PARTICULAR PART OF THE ESTATE BELONGED TO THE DECEASED, IF ANY EXECUTOR OR ADMINISTRATOR ACTING UNDER SUCH PROBATE OR LETTERS DOES NOT, WITHIN SIX MONTHS * * * AFTER THE DISCOVERY OF THE MISTAKE OR OF ANY EFFECTS NOT KNOWN AT THE TIME TO HAVE BELONGED TO THE DECEASED, APPLY TO THE SAID AUTHORITY AND PAY. WHAT IS WANTING TO MAKE UP THE COURT-FEE WHICH OUGHT TO HAVE BEEN PAID AT FIRST ON SUCH PROBATE OR LETTERS HE SHALL FORFEIT THE SUM OF ONE THOUSAND RUPEES AND ALSO A FURTHER SUM AT THE RATE OF TEN PER CENT. ON THE AMOUNT OF THE SUM WANTING TO MAKE UP THE PROPER COURT-FEE.

Notes to sec. 19*G*.

1. The words and figures "*after the first day of April,* 1875" or "*after the words six months*" were repealed by Act XII of 1891, Repealing and Amending Act.

2. The provisions of this section should now be read with secs. 19*E* and 19*I* and the wording thereof supports my contention that the proper time for making the application for a refund or for excess payment is *six months after the discovery of the true value of the estate.*

3. This section was incorporated in the Act prior to the amendments introduced by Act XI of 1899, and attention is here again directed to the

notes under sec. 19*E* as to what should be done in paying the excess duty.

4. Attention is here directed to the penalty imposed by this section, and it is perhaps as well to again draw attention to the provisions of the Succession Act, and Probate and Administration Act previously referred to, and also referred to under sec. 19*H*. It is not clear whether the penalty here imposed is in addition to the penalties referred to in sec 19*E*. Nothing is said as to whether the penalty is personal, but this, presumably, must be the case.

5. It seems to me that this section is also one requiring reconsideration.

6. As to recovery of any penalty imposed under this section, see provisions of sec. 19*J* and notes thereunder.

7. As to authorities, see the remarks appearing in the case cited under section 19*E* *reported in Bombay, printed judgment* 1896, *p.* 751, *and also the case reported in* 22 *C. L.* 375 *and* 20 *C. W. N.* 504 *where it is said the section is moulded on* 43, 55 *Geo. iii Ch.* 184 *and section* 122, 56 *Geo. iii Ch.* 56.

Notice of applications for probate or letters of administration to be given to Revenue-authorities, and procedure thereon.

19*H*. (1) WHERE AN APPLICATION FOR PROBATE OR LETTERS OF ADMINISTRATION IS MADE TO ANY COURT OTHER THAN A HIGH COURT, THE COURT SHALL CAUSE NOTICE OF THE APPLICATION TO BE GIVEN TO THE COLLECTOR.

(2) WHERE SUCH AN APPLICATION AS AFORESAID IS MADE TO A HIGH COURT, THE HIGH COURT SHALL

CAUSE NOTICE OF THE APPLICATION TO BE GIVEN TO THE CHIEF CONTROLLING REVENUE-AUTHORITY FOR THE LOCAL AREA IN WHICH THE HIGH COURT IS SITUATED.

(3) THE COLLECTOR, WITHIN THE LOCAL LIMITS OF WHOSE REVENUE-JURISDICTION THE PROPERTY OF THE DECEASED OR ANY PART THEREOF IS, MAY AT ANY TIME INSPECT OR CAUSE TO BE INSPECTED, AND TAKE OR CAUSE TO BE TAKEN COPIES OF, THE RECORD OF ANY CASE IN WHICH APPLICATION FOR PROBATE OR LETTERS OF ADMINISTRATION HAS BEEN MADE; AND IF, ON SUCH INSPECTION OR OTHERWISE, HE IS OF OPINION THAT THE PETITIONER HAS UNDERESTIMATED THE VALUE OF THE PROPERTY OF THE DECEASED, THE COLLECTOR MAY, IF HE THINKS FIT, REQUIRE THE ATTENDANCE OF THE PETITIONER (EITHER IN PERSON OR BY AGENT) AND TAKE EVIDENCE AND INQUIRE INTO THE MATTER IN SUCH MANNER AS HE MAY THINK FIT, AND, IF HE IS STILL OF OPINION THAT THE VALUE OF THE PROPERTY HAS BEEN UNDERESTIMATED, MAY REQUIRE THE PETITIONER TO AMEND THE VALUATION.

(4) IF THE PETITIONER DOES NOT AMEND THE VALUATION TO THE SATISFACTION OF THE COLLECTOR, THE COLLECTOR MAY MOVE THE COURT BEFORE WHICH THE APPLICATION FOR PROBATE OR LETTERS OF ADMINISTRATION WAS MADE, TO HOLD AN INQUIRY INTO THE TRUE VALUE OF THE PROPERTY :

PROVIDED THAT NO SUCH MOTION SHALL BE MADE AFTER THE EXPIRATION OF SIX MONTHS FROM THE DATE OF THE EXHIBITION OF THE INVENTORY REQUIRED BY SECTION 277 OF THE INDIAN SUCCESSION ACT, 1865, OR, AS THE CASE MAY BE, BY SECTION

X of 1865.

98 OF THE PROBATE AND ADMINISTRATION ACT, V of 1881.
1881.

(5) THE COURT, WHEN SO MOVED AS AFORESAID, SHALL HOLD, OR CAUSE TO BE HELD, AN INQUIRY ACCORDINGLY, AND SHALL RECORD A FINDING AS TO THE TRUE VALUE, AS NEAR AS MAY BE, AT WHICH THE PROPERTY OF THE DECEASED SHOULD HAVE BEEN ESTIMATED. THE COLLECTOR SHALL BE DEEMED TO BE A PARTY TO THE INQUIRY.

(6) FOR THE PURPOSES OF ANY SUCH INQUIRY THE COURT OR PERSON AUTHORISED BY THE COURT TO HOLD THE INQUIRY MAY EXAMINE THE PETITIONER FOR PROBATE OR LETTERS OF ADMINISTRATION ON OATH (WHETHER IN PERSON OR BY COMMISSION), AND MAY TAKE SUCH FURTHER EVIDENCE AS MAY BE PRODUCED TO PROVE THE TRUE VALUE OF THE PROPERTY. THE PERSON AUTHORIZED AS AFORESAID TO HOLD THE INQUIRY SHALL RETURN TO THE COURT THE EVIDENCE TAKEN BY HIM AND REPORT THE RESULT OF THE INQUIRY, AND SUCH REPROT AND THE EVIDENCE SO TAKEN SHALL BE EVIDENCE IN THE PROCEEDING, AND THE COURT MAY RECORD A FINDING IN ACCORDANCE WITH THE REPORT, UNLESS IT IS SATISFIED THAT IT IS ERRONEOUS.

(7) THE FINDING OF THE COURT RECORDED UNDER SUB-SECTION (5) SHALL BE FINAL, BUT SHALL NOT BAR THE ENTERTAINMENT AND DISPOSAL BY THE CHIEF CONTROLLING REVENUE AUTHORITY OF ANY APPLICATION UNDER SECTION 19*E*.

(8) THE LOCAL GOVERNMENT MAY MAKE RULES FOR THE GUIDANCE OF COLLECTORS IN THE

EXERCISE OF THE POWERS CONFERRED BY SUB-SECTION (3).

Notes and Cases under Section 19*H*.

1. This section was inserted by the Court Fees Amendment Act, XI of 1899, sec. 2.

2. The object of the amendment is, firstly to provide a check on the under-valuation of estates, by the person applying for probate of a Will, or for letter of administration, and secondly, to place on a more satisfactory footing the existing law relating to realisation of the duties payable on probate and letters of administration (*Proceeding of the Legislative Council Gazette of India, 3rd July*, 1897, *Part VI, p.* 206).

As the law now stands duty is payable not on the application for, but on the grant of, probate or letters of administration. A person to whom sections 187 and 190 of the Indian Succession Act X of 1865 do not apply, and who is not bound to produce probate or letters of administration to establish his right in succession may attain all he desires, by merely obtaining on his application an order for the grant of probate, or letters of administration, without actually taking out, and paying the fees prescribed, for the probate or letters of administration applied for. This cannot obviously have been contemplated, and the latter part of clause 2 of the Bill is intended to guard against it (*Objects and Reasons I. G., 3rd July*, 1877, Pt. V, p. 112).

3. It is further stated, in the Objects and Reasons, that there was no means of checking the

sufficiency of the petitioner's valuation, and it was proposed to remove what experience had shown to be a defect, by adding a section enabling the Chief Revenue Authority to inspect the records of any case and to prove to the Court the under-valuation of the estate concerned. (*See Objects and Reasons I. G., 3rd July*, 1897, *Pt.* V, p. 112.)

4. Again the section had been drafted so as to empower the Collector to intervene by examining the applicant, or by adducing other evidence of under-valuation, in order to secure the payment of the proper amount of the Court Fee.

(*Proceedings of Council I. G., 3rd July*, 1897, *Pt.* VI, 207.)

5. The words "*for the local area in which the High Court is situate*" in para. 2 were substituted for the words "*of the Province*" by sec. 3(2) of Act X of 1901.

6. Turning now to the provisions of the section it is as well to examine the following points :—

Clauses 1 *and* 2. (*a*) *Notice* (*clauses* 1 *and* 2). Where the application is to a Court, other than a High Court, notice of the application has to be given by the Court to the Collector that is to say, the Collector of the District. As regards the High Courts, notice is given by the Registrar to the Chief Controlling Revenue Authority for the local area; this generally speaking means the Secretary to the Board of Revenue for the Province in which the High Court is situate.

Clause 3 (*b*). *Clause* 3. Here power is given to the Collector, within whose jurisdiction any property may be situate, to take copies of the record, and to take evidence, if he is of opinion that there has not been a proper valuation and if he is satisfied thereafter, that there has been an under-estimate, he may require an amendment.

Here apparently what is chiefly contemplated, is a valuation of immovable property, although it is not so expressly stated, but the words used are "*within the local limits of whose revenue-jurisdiction, etc.*" There are many cases in which an application for a grant is made where property, *i.e., immovable property* appertaining to an estate is situate in a district, other than that from which the grant issues, or it may be that the property is situate in another Province. Under this section power is given to the Collector, within whose jurisdiction the property is situate, to make the enquiry contemplated.

There are the following points which arise and appear to require consideration :—

(1) There is nothing in the section which shows the nature of enquiry to be made, on which the opinion is to be based.

(2) There is nothing to show how the costs in such enquiry are to be met.

(3) There is nothing to show whether this enquiry is to be *ex parte*, or on notice.

(4) There is nothing to show how the expenses of petitioner, or taking of other evidence, is to be met.

(5) There is nothing to show whether the petitioner is entitled to have before him, the reasons for the Collector's opinion, before he can be called upon to attend, and before evidence can be taken.

(6) There is nothing to indicate the manner in which the evidence is to be recorded, or whether it is to be on oath, or otherwise. The clause is also silent upon the point as to the manner in which the expenses of the witnesses are to be met.

(7) The power given by the clause is undoubtedly wide, but at the same time I do not think sufficient consideration has been shown to inconveniences that may arise, and expenses that an applicant for a grant may be put to, by an injudicious exercise of the powers, purporting to be conveyed on Collectors by this section.

(*c*) *Clause* 4.—This clause gives power to the Collector to move the Court, if the petitioner called upon to amend his valuation, refuses to do so.

It will be noted the section says Collector, and presumably refers to the officer not satisfied. But what would be the position if more than one Collector is not satisfied. Could all apply? In such a case the proper course presumably would be for the Collector or the Chief Controlling Revenue Authority (for the local area) in which the grant has been made to move the Court, *i.e.*, the District Court, or High Court as the case may be.

This clause, read with the previous clause, seems to place rather an arbitrary power in the

hands of a Collector, and here again be it noted the clause is silent as to the petitioner being furnished with a copy of the grounds of opinion, before he is called upon to amend his valuation.

It has been held that it is not sufficient for a Collector simply to make an application for an enquiry, but he should place materials before the Court showing that an enquiry is needed (*Goods of J. R. A. Stevenson*, 6 C.W.N., 898).

(*d*) *Proviso to Clause* 4.—This proviso, so to speak, fixes the period of limitation for a motion of enquiry, *i.e.*, 6 *months from the date of the exhibition of the Inventory required by section* 277, Indian Succession Act and sec. 98, Probate and Administration Act. (*See* 19 C.L.J. 136 and 18 C.W.N. 153, *hereafter referred* to.)

It is curious to note that no reference is made to secs. 277*A* and 99 of above Acts.

The clause is silent as to what is to be the period, if no Inventory has been filed, and presumably the period would not commence to run until such was filed. Then again has the Collector to ascertain for himself whether such Inventory has been filed or not?

The result of this clause in effect is, that the power given to move the Court can be exercised long after the grant has been made, for the simple reason that no Inventory can be filed till after issue of the grant. It will be noted, when we deal with the next section, that it is expressly provided that the grant shall not be delayed by any motion,

but this for reasons hereafter given, seems rather a curious provision under that section.

Regarding provisions as to Inventory and Account, see note hereafter (heading J, page 180, *post*).

It seems to the writer that this clause also requires re-consideration.

(*e*) *Clause* 5.—Under this clause it is stated the Court *shall hold or cause to be held.* These words would appear to mean that the enquiry shall be held by the Court, or the Court may depute some other person to hold it. If held by the Court, it must record a finding as to true value, etc. It is also provided the Collector shall be a party, but nothing is said as to the petitioner being a party but this must be so and he is entitled to be heard.

(*f*) *Clause* 6.—This clause gives power to the Court, or the person authorised under clause 5, to examine the petitioner, either in person, or on commission, and to take such other evidence as may be produced, and in the case of the person authorised he has to return the evidence taken, and report the result, and the report, and evidence, can be taken as evidence in the proceedings, and the Court is to record its decision thereon.

Taking clauses 5 and 6 together read with clause 4, it can I think be laid down that the matter is to be treated as a motion. It would seem, however, that the Court can hold the enquiry itself, or depute some other person to do so. Can

both steps be taken? In other words, can the Court hear a portion of the evidence, and depute a person to hear another portion, where the witnesses do not reside within the jurisdiction? It seems to me that if the Court is holding the enquiry, the proper course would be to take evidence of persons outside the jurisdiction by affidavits as is done on motions.

It will be noted that nothing is said in either clause 5 or 6 as to the costs of such an enquiry, and both these clauses would appear to require reconsideration.

(*g*) *Clause* 7.—This clause only speaks of a finding under clause 5 being final. Does this cover a finding under the latter portion of clause 6.

Regarding the reference to sec. 19*E*, see notes under that section.

(*h*) *Clause* 8.—No rules appear to have been framed under this section.

(1) *Costs of Enquiry.*—No provision has been made in the Act, with regard to the costs of an enquiry, and it seems to me that this has been left to the discretion of the Court. In any event it seems to me that executor, or administrator, would be entitled to his costs out of the estate, unless perhaps he had committed a deliberate fraud. (*See goods of J. R. A. Stevenson,* 6 C.W.N. 898, *hereafter referred to.*)

(*j*) *Inventory and Account.*—Every grant of probate or letters of administration issued contains an undertaking, *firstly*, to file an inventory

within *six months* from the date of grant and within such further time as the Court may from time to time appoint, and, *secondly*, to render an account within *one year* or such further time as the Court may from time to time appoint (see secs. 254 and 255, Indian Succession Act and secs. 76 and 77, Probate and Administration Act).

It is further provided by secs. 277 and 98 of the above Acts, that an executor, or administrator, must *within six months* from the date of grant, or within such further time as the Court may allow, file an inventory, and within one year or such further time as the Court may allow, an account. The sections further provide that if an executor or administrator, fails when required to exhibit an inventory, or account, or intentionally omit to comply with the requisition, he shall be deemed to have committed an offence under sec. 176, Penal Code, and the exhibition of an intentionally false inventory or account is an offence under sec. 193 of that Code.

Secs. 277*A* and 99 of the aforesaid Act deal with inventory and account in cases of unlimited grants, *i.e.*, having effect throughout the whole of British India.

As previously pointed out, a great many private executors, and administrators, ignore the provisions of the above sections, and it would be as well for them to consider their liabilities under these sections. Although this subject is perhaps one more appropriate to the aforesaid Acts, it would perhaps be of use to refer to certain authorities upon

the point under discussion. *Mohesh Ch. Bhattacharjee* v. *Biswanath Bhattacharjee*, I.L.R. 25 Cal., 250, 1 C.W.N. 646. Here it was held that the words " *or within such further time as the Court may from time to time appoint*," etc., means that one account is to be exhibited, and not a series of accounts, from time to time; the words " from time to time appoint " relating to an extension of the period within which an account is to be exhibited. *Maharani S. Sundari Burmani* v. *Uma P. Roy Chowdry*, 8 C.W.N. p. 578, I.L.R. 31 Cal. 628. Here it was held, a District Judge had no power to institute a judicial enquiry by an audit of the inventory and account, at the expense of the executor, or administrator, and all that he was required to do was to see that the inventory appears to be a full and true estimate of all the property.

See also *Naba Chandra Chowdry* v. *Tripura Charan Chowdry*, 2 C.W.N., 597.

Bal Gangadhar Tilak v. *Sakwarbai*, I.L.R. 26 Bom. 792.

Kshitish Ch. Acharya Chowdri v. *Beeby*, I.L.R. 39 Cal., 597, 1 C.W.N. 516.

Authorities under sec. 19*H*.

Goods of James Rathly Augustus Stevenson, 6 C.W.N., p. 898. It was held in this case that in moving for an enquiry under this section, it was not enough for the Collector simply to make an application for an enquiry, but he should place materials before the Court showing that this was needed and he should make a case for an enquiry.

There is nothing in the Act saying in what way or by whom the expense of the enquiry should be met, and it would be the duty of the Court, if possible and if the circumstances permit, to hold the enquiry itself and so save further expense to the parties. (*See* judgment at p. 900.)

Rajkumari Bhubaneswari Kumar v. *Collector of Gya*, 19 C.L.J., 136, 26 M.L.J., 56, 18 C. W. No. 153. L.R. 40 I.A. 236.

Here it was held that the six months mentioned in clause 4 runs from the lodging of the inventory required by sec. 98, Probate and Administration Act, or sec. 277, Succession Act. That it does not run from the lodging of an inventory which does not satisfy the requirements of the State, but which might have satisfied a District Judge. Further that papers lacking the essential details of a "full and true estimate of all property in possession" cannot have the effect of an inventory contemplated by sec. 98, Probate and Administration Act so as to preclude the Collector from moving for an enquiry as to the valuation of the estate more than six months after their production under sec. 19*H*.

Payment of court-fees in respect of probates and letters of administration.

No. 10. *Section* 19*I* (1). NO ORDER ENTITLING THE PETITIONER TO THE GRANT OF PROBATE OR LETTERS OF ADMINISTRATION SHALL BE MADE UPON AN APPLICATION FOR SUCH GRANT UNTIL THE PETITIONER HAS FILED IN THE COURT A VALUATION OF THE PROPERTY IN THE FORM SET FORTH IN THE THIRD SCHEDULE, AND THE COURT IS SATISFIED THAT THE FEE MENTIONED IN NO. 11 OF THE FIRST SCHEDULE HAS BEEN PAID ON SUCH VALUATION.

(2) THE GRANT OF PROBATE OR LETTERS OF ADMINISTRATION SHALL NOT BE DELAYED BY REASON OF ANY MOTION MADE BY THE COLLECTOR UNDER SECTION 19*H*, SUB-SECTION (4).

Notes to Section—

(1) This section was added by Act XI of 1899.

(2) *Object of Amendment.*

The object of this amendment is, in the first place, to make it clear that the fee is to be paid on the valuation of the assets by the affidavit of the applicant in the first instance. The second part is intended to make it compulsory upon the Court to grant probate at once upon a proper affidavit of valuation, being before it, reserving the question of the investigation that may be made by the Revenue Authorities afterwards, and not to delay the grant of probate, because probate and letters of administration, where they are compulsory, are absolutely necessary for the administration of the estate, and if they are not granted quickly the delay may cause loss to the estate, and therefore it is necessary to have these grants made at once.—Proceedings of the Legislative Council (I.G., 18th March, 1899, Pt. VI, p. 81).

Under section 243 of the Indian Succession Act (X of 1865) an application for probate, or letters of administration, if duly made and verified, is conclusive for the purpose of authorising the grant of probate or letters of administration, and sections 187 and 190 provide that no right under a will, or to the property of an intestate, can

be established in any Court unless probate or administration, as the case may be, has been granted. But the Indian Succession Act does not apply to the case of Hindus, Muhammadans, or Buddhists, or to persons specially exempted (s. 332) by the Governor-General in Council, and the case of such persons is governed by the Hindu Wills Act (XXI of 1870) and the Probate and Administration Act (V of 1881). The latter Act while reproducing the provisions of section 243 of the Indian Succession Act, omits the provisions contained in sections 187 and 190, with the result that persons to whom the Act of 1881, and not the Indian Succession Act, applies find that if they apply for probate, or for letters of administration, and if their applications are admitted as duly made and verified, a certificate of the fact may have the same effect as if they incurred the expense involved in actually taking out formal probate or administration. They may thus derive all the benefit of the security given them by the law, without the liability to pay the fees which are involved in taking out formal probate or administration, whereas persons to whom the Act of 1865 applies are compelled, as already explained, by sections 187 and 190 of the Act, to obtain formal probate or administration, before any rights under any Will, or to the property of an intestate, can be established. This is clearly inequitable, and the question of the best means of remedying the defect in the law has resulted in the decision, to amend the Court Fees Act by the addition of a section on the lines of section 14 of the Succession Certificate Act . . . .

The second amendment is, in substance, the extension to applications for probates, and letters of administration, of the provisions of the law which already apply to applications for succession certificates, under the Succession Certificate Act of 1889. Proceedings of the Legislative Council (I. G., 3rd July, 1897, Pt. VI, p. 207).

3. It will be noted that the section says "*no order* entitling the petitioner to the grant of probate or letters of administration." It will thus be seen that no distinction is made between full and limited grants. As regards the latter, it of course must depend upon the nature of the grant, as to whether any duty is payable, and if so, on what assets, *e.g.*, if the grant were limited to trust property then no duty would be payable. There may also be circumstances entitling a total exemption in the first instance, *e.g.*, where a caveat has been entered before an application is made—here the payment of duty would be postponed until termination of the proceedings, but no grant could issue until such duty had been paid.

4. Where an administrator *pendente lite* is appointed his grant, generally speaking, covers the whole estate and duty must be paid before such grant can issue.

(*As to this, however, see remarks appearing at page* 15 *et seq. ante.*)

5. With regard to limited grants, such as limited until a will be proved, or during infancy, lunacy, etc., inasmuch as these grants cover the

entire estate, duty is payable before the issue of such grant.

6. In cases where a grant is ordered to issue to a person limited to being made a party to a suit (*vide sec.* 223, *Indian Succession Act, and sec.* 39, *Probate and Administration Act*) it seems to me that no duty would be payable on such a grant.

7. In regard to second, or subsequent grants, attention is directed to sec. 19*C* and notes and cases thereunder.

8. With regard to the second portion of the section, this is embodied to prevent delay in the issue of any grant, but it is difficult at the same time to follow why it was framed in manner appearing. A motion such as contemplated by sec. 19*H*, would generally be made after an order had been made for the issue of the grant and the Collector could only get notice *after* the application had been filed and this could not be filed unless the duty had been paid.

9. *Form of Affidavit.*—Upon this subject attention is directed to the notes and remarks appearing in Chapter III dealing in detail with the form of affidavit and the various headings thereof. See also the sample form of affidavit set out at page 76 *ante*.

10. *Authorities under the Section.*—In the case of *in the Goods of Omda Bibee*, I. L. R.

26 Cal. 407, 3 C.W.N., 392, it was held that since the passing of Act XI of 1899 that—

(*a*) The *ad valorem* fee is required to be prepaid to the satisfaction of the Court.

(*b*) In Presidency Towns the payment should be made to the Registrar.

(*c*) Where an exemption is claimed, a certificate allowing the exemption must be produced with the application and affidavit of valuation.

Goods of Aradhoney Dassee, 5 C.W.N., c.c.l. iv.

Here it was held that the duty is payable before the order for a grant can be made, but not necessarily payable at the time of the application for such grant.

Pa Ke v. *Naw Bo He*, Lower Burmah Rulings, 1893-1900, p. 623.

Here it is stated that in Subordinate Courts, the fees must be paid to the Court Clerk, who will certify the amount to the Court, and this certificate and the Court Fee Stamp must be attached to the application for letters or probate.

Deputy Commissioner, Lucknow, v. *Tej Kishen*, 8 Ind. Cases, 695.

Here it was held that sec. 19*I* was no bar to the hearing of an application for a grant if the petitioner undertook to pay such fee as may be found payable if the application is accepted.

11. *Administrator-General.*—The Administrators-General under Act III of 1913 (as

was the case under Act II, 1874) are exempt from verifying petitions, and it has been held that such official, is also exempt from making this affidavit of valuation, but in practice, so far at any rate as Bengal is concerned, the particulars given in the Act are embodied in his petition. (*For forms of petitions, see Handbook of Administration Law in India*). These officials, however, like every other applicant, have to prepay the duty. See following cases:—

Goods of Avdall, 3 C.W.N., 298.
Goods of McComesky, I.L.R., 20 Cal., 879.
Goods of Mrs. H. T. Kerr, 18 C.W.N. 121.
Goods of Quiningborough, 22 C.L.J. 160.

12. *Official Trustee.*—Under Act II of 1913, this official is now entitled to act as executor and as under this Act he is exempt from verifying petitions, etc., the same rule as above, would it is submitted be applicable to him.

Recovery of penalties, etc.

No. 11 19*J*. (1) ANY EXCESS FEE FOUND TO BE PAYABLE ON AN INQUIRY HELD UNDER SECTION 19*H*, SUB-SECTION (6), AND ANY PENALTY OR FORFEITURE UNDER SECTION 19*G* MAY, ON THE CERTIFICATE OF THE CHIEF CONTROLLING REVENUE-AUTHORITY, BE RECOVERED FROM THE EXECUTOR OR ADMINISTRATOR AS IF IT WERE AN ARREAR OF LAND-REVENUE BY ANY COLLECTOR IN ANY PART OF BRITISH INDIA.

(2) THE CHIEF CONTROLLING REVENUE AUTHORITY MAY REMIT THE WHOLE OR ANY PART OF ANY SUCH PENALTY OR FORFEITURE AS AFORESAID, OR ANY PART OF ANY PENALTY UNDER SECTION 19*E*

OR OF ANY COURT-FEE UNDER SECTION 19*E* IN EXCESS OF THE FULL COURT-FEE WHICH OUGHT TO HAVE BEEN PAID.

Notes to Section—

1. This section was inserted by Act XI of 1899. There was a similar provision contained in repealed by sec. 4, Act XI of 1899. (See Act VI of 1899, sec. 20, but this was notes to sec. 19*E*).

2. The object of this section is to provide a mode for recovery of any excess duty found payable under sec. 19H(6) or any penalty or forfeiture payable under sec. 19G. (*See* notes to these sections *ante*.)

3. The second clause of the section refers exclusively to remission of any penalty or forfeiture.

4. It is curious to note that the section does not expressly refer to the recovery of any excess duty that might be payable after the due administration of an estate, but it might perhaps be said to be governed by this section.

In the case of *Nikunjarani Chaudhurani* v. *Secretary of State*, 22 *C. L. J.* 375; 20 *C. W. N.* 504; it is stated where the section is applicable the applicant is in hands of Revenue authority who can refuse to stamp till revenue is paid, and that no occasion can arise for recovery by summary procedure, or by suit, of penalty imposed by section 19*E*.

No. 12 19*K*. NOTHING IN SECTION 6 OR SECTION 28 SHALL APPLY TO PROBATES OR LETTERS OF ADMINISTRATION.

Sections 6 and 28 not to apply to probates or letters of administration.

Notes to Section—

1. This section was introduced by Act XI of 1899.

2. *Object of Section.*—Owing to this duty being levied as a Court-fee, on a grant of probate or letters of administration, the result was produced that although the probate had been stamped by the Court on payment of a duty, yet if the duty were insufficient, the document would be improperly stamped, and an objection could be raised to its admissibility in evidence, or even its validity. Now, inasmuch as probates and letters of administration are letters of authority to administer property, it was, of course, exceedingly inconvenient that they should be subjected to any invalidity of this kind. They stand on an entirely different footing from that of ordinary documents not properly stamped, and now that there is a power on the part of the Revenue Authorities to apply for the excess revenue and to collect it themselves, it is unnecessary to continue these side pressures at all.—Proceedings of the Legislative Council (I. G., 18th March, 1899, Pt. VI, p. 83).

3. Sec. 6 of the Act relates to exhibiting documents not properly stamped and sec. 28 deals with the validity of documents not properly stamped.

4. Inasmuch as nothing in these two sections applies to probates or letters of administration,

no good can be gained by referring to any authorities under those sections.

No. 13. *Section* 25. ALL FEES REFERRED TO IN SECTION 3 OR CHARGEABLE UNDER THIS ACT SHALL BE COLLECTED BY STAMPS.

Notes and cases under sec. 25.

We have under the notes to sec. 5 dealt with the provisions of sec. 3.

Although this section, *i.e.*, 25 was incorporated in the Act prior to the introduction of Chapter IIIA, and the subsequent additions thereto, the duty on probate, or letter of administration, are payable by stamps. This procedure is a cumbersome one, and at times, where the duty is heavy, the grant itself becomes a very cumbersome document. It seems to me that it would be better if some other method of the payment of duty were adopted. If this were done, it would be simple for the Court issuing the grant, to certify, on the face of it, the amount of duty paid, as also the date of payment thereof.

As regards the nature of stamps, see note to sec. 26. As to value it is always advisable to purchase stamped paper of the value as near to the duty as possible, and as small a number of sheets as possible should be purchased; see

Tarinee Churn Nyabachusputty v. *Taranath Goohoo*, 12 W.R., 449.

Ranee Khajoorinissa v. *M. Rohimoonessa*, 16 W.R., 152.

Mirza Dawd Ali v. *Syud Nadhir Hossein*, 16 W.R., 153.

Hurro Monee v. *Kristo Inddo Chaha*, 17 W.R., 220.

No. 14. *Section* 26. THE STAMPS USED TO DENOTE ANY FEES CHARGEABLE UNDER THIS ACT SHALL BE IMPRESSED OR ADHESIVE OR PARTLY IMPRESSED AND PARTLY ADHESIVE, AS THE GOVERNOR-GENERAL OF INDIA IN COUNCIL MAY, BY NOTIFICATION IN THE GAZETTE OF INDIA, FROM TIME TO TIME DIRECT. Stamps to be impressed or adhesive.

Notes and cases under sec. 26.

1. As a matter of fact the payment of duty is made by impressed stamp sheets, bearing the words " Court Fee " and it is only when the value cannot be obtained, that adhesive stamps are used to make up the value.

2. The above is in accordance with notification No. 361, dated 18th April, 1883, which superseded the notification dated 5th March, 1875 (No. 1520); for full text see " Gazette of India," 1883, Pt. I, p. 189. The purport is if the fee is less than Rs. 10 only, adhesive stamps are to be used, and if the fee exceeds Rs. 10, impressed stamps, adhesive stamps being used to make up fractions of less than Rs. 10.

3. In addition to the notification above referred to, attention is also directed to the following:—

(*a*) No. 1522 S. R., dated 20th March, 1895; Gazette of India, 1885, Part I, p. 213, relating to

additional fee payable under sec. 19*E* and under which such fee can be paid by impressed and adhesive, or wholly by latter.

(*b*) No. 1494, dated 29th March, 1895; Gazette of India, 1895; Part I, p. 265—this merely refers to size and pattern of adhesive stamps.

(*c*) No. 4070 S.R., dated 23rd August, 1885; Gazette of India, 1895, Part I, p. 722—this also refers to size and pattern of adhesive stamps used under first para. of sec. 3.

(*d*) No. 3318 S.R., Gazette of India, 1896, Part I, p. 604.

This refers to form of adhesive stamps in High Courts.

4. *Authorities.*—In the case of *Annapurna Bai* v. *Lakshman Bhikaji Vakharkar*, I.L.R., 19 Bom., 145, it was stated, that though the section provides that the stamps to be used, shall be of such kind as the Governor-General in Council may by notification direct, and such notification had been issued, a direction therein that the stamp should bear the words "Court-Fee" is not a matter in which he had authority to give any direction, under the section, and can only be regarded as a departmental order the non-observance of which could not invalidate the stamp for the purpose of the Act.

Rules for supply, number, renewal and keeping accounts of stamps.

No. 15. *Section* 27. THE LOCAL GOVERNMENT MAY, FROM TIME TO TIME, MAKE RULES FOR REGULATING—

(*a*) THE SUPPLY OF STAMPS TO BE USED UNDER THIS ACT,

(*b*) THE NUMBER OF STAMPS TO BE USED FOR DENOTING ANY FEE CHARGEABLE UNDER THIS ACT,

(*c*) THE RENEWAL OF DAMAGED OR SPOILED STAMPS, AND

(*d*) THE KEEPING ACCOUNTS OF ALL STAMPS USED UNDER THIS ACT :

PROVIDED THAT, IN THE CASE OF STAMPS USED UNDER SECTION 3 IN A HIGH COURT, SUCH RULES SHALL BE MADE WITH THE CONCURRENCE OF THE CHIEF JUSTICE OF SUCH COURT.

ALL SUCH RULES SHALL BE PUBLISHED IN THE LOCAL OFFICIAL GAZETTE, AND SHALL THEREUPON HAVE THE FORCE OF LAW.

Notes under sec. 27.

For rules, see the following :—

1. Bengal—Bengal Stat. R. & O., Vol. I. Cal. Gazette, 1907, Part I, 432.

2. Bombay—Bombay, R. & O., Vol. I.

3. Madras—Madras, R. & O., Vol. I.

4. Punjab—Punjab, R. & O.

5. United Provinces—U. P., R. & O., Vol. I, Pt. I.

6. Central Provinces—C. P. Gazette, 1902, Pt. III, p. 69.

7. Burmah—Burmah Gazette, 1902, Part I, p. 9.

8. Ajmer-Merwara—Ajmer, R. & O., Vol. I.

9. Baluchistan—Baluchistan Code, p. 122.

10. Coorg.—Coorg, R. & O.

11. North-West Frontier.—Gazette of India, 1902, Part II, p. 98.

12. Assam.—E. B. and Assam Gazette, 1908, Part II, p. 642.

No. 16. *Section* 35.

Power to reduce or remit fees.

35. THE GOVERNOR-GENERAL OF INDIA IN COUNCIL MAY, FROM TIME TO TIME BY NOTIFICATION IN THE GAZETTE OF INDIA, REDUCE OR REMIT, IN THE WHOLE OR IN ANY PART OF BRITISH INDIA, ALL OR ANY OF THE FEES MENTIONED IN THE FIRST AND SECOND SCHEDULES TO THIS ACT ANNEXED, AND MAY IN LIKE MANNER CANCEL OR VARY SUCH ORDER.

Notes to Section 35.

(1) With regard to general remissions attention is drawn to notification No. 4650 dated 10th September, 1889 (Gazette of India, 1889, Part I, p. 506).

This and other notifications do not, however, relate to Estate Duty.

(2) Since the war, a notification has been issued under this section dealing with Estate Duty in respect of estates where death has been caused by the war and that notification is as follows:—

No. 120 F.

Government of India, Finance Department.
Delhi, the 14th January, 1915.

Notification.

In exercise of the powers conferred by Section 35 of the Court Fees Act, 1870 (VII of 1870), the Governor-General in Council is pleased to make in the whole of British India the remissions hereinafter set forth in the fees leviable, under Articles 11, 12 and 12A of the first schedule of the said Act, on the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring, or disease contracted within twelve months before death while on active service in the present war, namely:—

(*a*) Where the amount or value of property in respect of which the grant of probate or letters of administration is made, or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under Bombay Regulation No. 8 of 1827, does not exceed Rs. 5,000, to remit the whole of the fees leviable in respect of that property;

(*b*) where the said amount or value exceeds Rs. 5,000, to remit the whole of the said fees in respect of the first Rs. 5,000; and

(*c*) where any property passes more than once in consequence of such deaths, to remit in the case of second and subsequent successions the whole of the said fees irrespective of the value or amount of such property.

3. As regards the procedure to be adopted having regarding to this notification, in framing the affidavit of valuation, it has been decided by the High Court in Calcutta to adopt the following :—

(1) To give first the gross value in Annexure A.

(2) To give the value of liabilities in Annexure B, and further to show also the amount of the exemption allowed by this notification as remission (under the last heading in Annexure B).

(3) The certificate to issue as to payment or non-payment, as the case may be, would show the amount remitted under this section.

4. If there has been an omission to claim a remission under this section at the outset, it could be claimed after the grant, on the adjustment of duty, as hereinbefore pointed out.

5. In England the law on this point is governed by Death Duties (Killed in War) Act, 1914, and it will be noted that a far greater allowance is made by that Act than by the above notification.

APPENDIX "A."

FORM OF AFFIDAVIT IN SUPPORT OF APPLICATION FOR REFUND OF DUTY IN ESTATES EXCEEDING RS. 1,000/- IN VALUE.

NOTE.—*See remarks under sec.* 19*A*. *Modifications can be made to suit the circumstances of each case.*

Before the Collector of *(or the Chief Controlling Revenue-Authority of* *).*

In the goods of A. B. (*here insert full name of deceased and description, same as in original petition for grant*).

1. I, C. D. (*here insert name of deponent*) of (*address*) make oath and say as follows :—

2. That I am (*here insert whether executor or administrator*) to the estate of the deceased abovenamed.

3. That the deceased died on day of and I obtained (*probate or administration*) to the estate of the said deceased on the day of and the same was issued on the day of from the (*here insert the name of the Court which issued the Grant*).

4. That with my application for a grant I filed on the day of an affidavit of valuation as required by Section 19*I* of the Court Fees Act, and therein disclosed to the best of my knowledge and belief, the assets likely to come to my hands, and the liabilities payable. A summary of such affidavit is set out in the Schedule "A," Parts I and II hereto annexed.

5. That the value of the gross assets so disclosed as aforesaid, was Rs. and the value or amount of liabilities disclosed was Rs. leaving the net value of the assets as Rs.

6. That duty was paid on such net value at the rate of (*here say whether* 2 *per cent.*, $2\frac{1}{2}$ *per cent., or* 3 *per cent.*) and the amount of such duty was Rs. as is evidenced by the grant of (*probate or administration*) now produced.

7. That since the issue of the grant, I proceeded to realise all assets appertaining to the estate, and to discharge all liabilities (after having inserted the usual statutory notice) of which I had notice.

8. That I have kept a true and accurate account of all my dealings with the estate of the deceased abovenamed, and I have in accordance with the provisions of the law filed my inventory and account in the said Court on the day of .

9. That according to my account and dealings with the said estate, I say, that the accurate and true value of the said estate, as to assets realised and liabilities paid is disclosed in the Schedule B (Parts I and II) hereto annexed.

10. That it will be seen from the said Schedule B that the total value of gross assets realised is Rs. and that the total value of liabilities discharged is Rs.
leaving the net value of the estate as Rs.

11. That the debts and liabilities so paid or provided for are all debts which are payable by law out of the estate of the deceased abovenamed, and I have not included any debts which are not so payable.

12. That the true amount of duty now found to be payable on the value of the said net assets, *viz.*, Rs. at the scale of (2, 2½, or 3 per cent.) is Rs. as shown by the following summary :—

	Rs.	As.	P.	
(*a*) Amount or value of net assets as originally disclosed (say Rs. 52,000/-).				
(*b*) Amount or value of net assets as ascertained (as per Schedule B, say Rs. 48,000/-).				
(*c*) Amount of duty paid on net assets as per Schedule A at 3 per cent.	1,560	0	0	These figures are only given as examples.
(*d*) Amount of duty now found to be payable on net assets as ascertained (as per Schedule B) at 2½ per cent.	1,200	0	0	
Amount of duty overpaid and now refundable ...	360	0	0	

13. That I have in Schedule B included the value of all assets realised and interest, income and rents up to date of grant (or swearing of original affidavit) and which were, or are chargeable, with duty, and I have not concealed or omitted any assets liable to duty.

See remarks as to income, etc., page 10, et seq.

See remarks as to this in Chapter at page 109.

14. That in dealing with property held by the deceased as Trustee, or in trust not beneficially or with general power to confer a beneficial interest any such property has not been disclosed (or it has been disclosed in Schedule A as also in Schedule B) and the value thereof in both Schedules has been treated alike.

15. That the above application is made within 6 months from the date of my having ascertained the true value of the estate and which was only ascertained by me on or about the day of

Sworn by the said C.D.
this day of
before me.

Commissioner or Magistrate
or other person authorised
to administer oaths.

SCHEDULE A.

Summary of assets and liabilities disclosed in affidavit of valuation of assets.

PART I.

Short particulars of property or assets disclosed in affidavit.	Value of property or assets as given in affidavit.
	Rs. As. P.
1. Cash in the house	
2. Cash in the Banks	
Interest on above	
3. Household goods, wearing apparel, books, plate, jewels, etc. ...	

PART I.—contd.

Short particulars of property or assets disclosed in affidavit.	Value of property or assets as given in affidavit.
	Rs. As. P.
4. Property in Government securities, etc., viz.:—	
(*a*) Government Paper ...	
(*b*) Municipal Debentures, etc. ...	
Interest due on abcve ...	
5. Immoveable property, viz.:—	
(*a*) House situate at	
(*b*) Zemindary situate at	
Rents in arrear	
6. Leasehold property, viz.:—	
(*a*) House or land situate at	
Rents in arrear	
7. Property in Public Companies, viz.:—	
(*a*) 200 Ordinary shares in	
(*b*) 30 Debentures in	
Dividends due on above ...	
8. Policy of Insurance, viz.:—	
(*a*) Policy No. in A & B Co. ...	
9. Money out on mortgage and other securities such as Bonds, etc.	
Total amount ...	
Interest on above (if any) ...	

PART I.—concld.

Short particulars of property or assets disclosed in affidavit.	Value of property or assets as given in affidavit.
	Rs. As. P.
10. Book Debts	
11. Stock-in-trade	
12. Other property not comprised under the foregoing heads,	
Total value	
Interest if any	
Total value as disclosed	
Deduct total value of debts and liabilities as per Part II ...	
Net value on which duty paid at per cent.	

PART II.

Short particulars of liabilities as disclosed.	Value of liabilities as disclosed.
	Rs. As. P.
1. Amount of debts due and owing	
Total of debts disclosed ...	
Interest, if any	
2. Amount of funeral expenses ...	

PART II.—contd.

Short particulars of liabilities as disclosed.	Value of liabilities as disclosed.
	Rs. As. P.
3. Amount of mortgage encumbrances—	
(*a*) On immoveables	
(*b*) On moveables	
Total interest ...	
4. Property held in trust, etc. (Total value if also disclosed in Pt. I)	
5. Other property not subject to duty	
Total value ...	
Total value of property not subject to duty	

See note at foot and remarks at page 149 *ante*.

SCHEDULE B.

Summary of assets and liabilities realised and paid on which duty is adjustable.

PART I.

Short particulars of property or assets realised.	Value of property or assets realised.
	Rs. As. P.
1. Cash in house	
2. Cash in the Banks	
Interest realised	

PART I.—contd.

Short particulars of property or assets realised.	Value of property or assets realised.
	Rs. As. P.
3. Household goods, wearing apparel, books, plate, jewels, etc. (as realised or valued) ...	
4. Property in Government Securities, etc.—	
(*a*) Value of Government Securities as realised	
(*b*) Value of Municipal Debentures as realised	
Interest realised up to date of grant or swearing of affidavit of valuation	
(Continue items as given in Schedule B) showing where sale amount realised.	
Total value of assets, etc., realised	
Deduct total value of debts, etc., paid	
Net value on which duty adjustable	

PART II.

Short particulars of liabilities paid.	Value of debts and liabilities paid.
	Rs. As. P.
1. Total amount of debts due to creditors and paid	
Total amount of debts provided for as follows:—	
2. Amount of funeral expenses paid	

PART II.—contd.

Short particulars of property or assets.	Value of debts and liabilities paid.
	Rs. As. P.
3. Amount of encumbrances paid— On immoveables with interest ... On moveables with interest ...	
4. Property held in trust, etc. (only if included in Pt. I)	See note at foot.
5. Other property not subject to duty, viz.:—	
Total value of above ...	

NOTES ON ABOVE AFFIDAVIT.

(*a*) The above form can be modified to meet the circumstances of the case.

(*b*) If an inventory and account has not been filed, this should be so stated in para. 8 and reasons given why it has not been filed.

(*c*) If any asset still remains to be realised, or is the subject of litigation, this should be disclosed, and an undertaking given to bring it into account, should it come into possession.

(*d*) Debts not payable by law, cannot be brought in, even if the legatees, or next of kin, consent to their payment, such as debts of honor, but debts barred by limitation can be included, for reasons previously stated.

(*e*) With regard to the value of property held in trust, if the value is to be deducted in Part II

of Schedule A or B, then particulars must also be disclosed in Part I. But to my mind perhaps the better procedure is to exclude this item altogether and insert a para. in the affidavit that property held as Trustee has not been included in either Schedule. See note to para. 14 of affidavit and notes on this point, pages 109 and 149 *ante et seq.*

(*f*) This affidavit with the grant should be submitted to the Collector and his orders awaited.

APPENDIX B.

Short form of affidavit for use where a total refund is claimed. This can only be where the net assets are under Rs. 1,000 in value, or the estate is insolvent.

Before the Collector, etc.

In the Goods of A. B., etc.

1. I/C. D., etc. (follow Appendix A.)
2. Same as in Appendix A.
3.

4. That with my application for a grant I filed on the day of an affidavit of valuation as required by section 19*I* of the Court Fees Act and disclosed therein the net value of the assets as Rs. on which the sum of Rs. was paid as duty at the rate of 2 per cent. ($2\frac{1}{2}$ or 3 per cent.) as is evidenced by the grant now produced.

5. That since the issue of the grant (follow para. 7, Appendix A).

6. Follow paragraph 8, Appendix A, if account and inventory has been filed.

7. That the total value of assets realised by me amounts to Rs. and the total amount of liabilities paid by me and which are all payable by law is Rs.

8. That the net value of the estate works out to Rs. (under Rs. 1,000) and no duty is therefore payable, and I claim a refund of the duty paid.

9. That it will be seen the liabilities have exceeded the assets, and I accordingly claim a refund of the duty paid. To be used when estate insolvent.

10. That I have brought into account all assets of which I have had notice and have only paid such liabilities as are payable by law (but I have excluded the value of property held by the deceased as Trustee).

11. That the above application is made (follow paragraph 15, Form in Appendix A).

Sworn by the said C. D.
this day of
before me.

Commissioner or Magistrate
or other person authorised
to administer oaths.

Note.

This short form is adopted in order to save costs to a small estate.

This affidavit, with the grant, should be submitted to the Collector and his orders awaited.

APPENDIX C.

FORM OF AFFIDAVIT IN SUPPORT OF APPLICATION FOR PAYMENT OF EXCESS DUTY.

Note.—See remarks under section 19E. Modifications can be made to suit the circumstances of the case.

Before the Collector, etc. (see Appendix A).

In the Goods of A. B. (*here insert full name and description same as in original petition for grant*).

1. I, C. D. (*here insert name of deponent*) of (address) make oath (*or solemnly affirm*) and say as follows:—

2.
3.
4.
5.
6.
7.
8.
9.

follow Form in Appendix A.

10. That it will be seen from the said Schedul B that the total value of the gross assets realise is Rs. and exceeds in value the gross valu of the assets disclosed in my original affidavit, an

that the total value of liabilities discharged or provided for is Rs. , leaving the net value of the estate as Rs. which is in excess of the net value originally disclosed.

11. That the debts and liabilities so paid or provided for, are all debts which are payable by law, out of the estate of the deceased abovenamed, and I have not included any debts which are not so payable.

12. That the true amount of duty now found to be payable on the value of the said net assets, *viz.*, Rs. at the scale of (2, 2½, or 3 per cent.) is Rs. as shown by the following summary:—

	Rs.	As.	P.	
(*a*) Amount or value of net assets as originally disclosed as per Schedue A ...	48,000	0	0	
(*b*) Amount of value of net assets as ascertained as per Schedule B ...	52,000	0	0	I give same figures here as in Appendix A as an example.
(*c*) Amount of duty paid on net assets as per Schedule A at 2½ p. c. ...	12,000	0	0	
(*d*) Amount of duty now found to be payable on net assets as ascertained as per Schedule B at 4 per cent. ...	1,560	0	0	
Amount of duty now found to be payable in excess ... difference between (d) and (c).	360	0	0	

13. } See paras. 13 and 14, Appendix A and
14. } note in margin.

15. That I am now anxious to pay the excess duty found payable, on the true value of the net assets as ascertained by me, and I further say that this application is made within 6 months from the date of my having ascertained such true value and which was only ascertained by me on or about the day of

Sworn by the said C. D.
this day of
Before me

Commissioner or Magistrate or other person authorised to administer oaths.

Notes.

(*a*) See notes under Appendix A.

(*b*) As to question of Trust property, see notes, pages 109 and 149 *ante et seq.*

(*c*) The affidavit with the grant should be submitted to the Collector and his orders awaited and on receipt thereof the excess duty paid.

SCHEDULE A.

Summary of assets and liabilities disclosed in affidavit of valuation of assets.

PART I.

Short particulars of property disclosed in affidavit.	Value of property or assets as given in affidavit.
	Rs. As. P.
(Follow Schedule A to Appendix A.)	
Total value as disclosed ...	
Deduct total value of debts and liabilities as per Part II	
Net value on which duty was paid ...	

PART II.

Short particulars of liabilities as disclosed.	Value of liabilities as disclosed.
	Rs. As. P.
(Follow Schedule A, Appendix A.)	
Total value of property not subject to duty	

SCHEDULE B.

Summary of assets and liabilities realised and paid and on which duty is adjustable.

PART I.

Short particulars of property or assets realised.	Value of property or assets realised.
	Rs. As. P.
(*Follow Schedule B, Appendix A*).	
Total value ...	
Deduct total value of debts paid, etc.	
Net total on which duty is adjustable	

PART II.

Short particulars of liabilities paid, etc.	Value of debts and liabilities paid.
	Rs. As. P.
(*Follow Schedule B, Appendix A.*)	
Total value of above ...	

APPENDIX D.

Short form of affidavit for use where originally no duty was paid and the net assets work out to over Rs. 1,000.

Before the Collector, etc.

In the goods of A. B., etc.

1. I, C. D., etc. (follow Appendices A & B.)

2.
3. } follow Appendix A.

4. That with my application for a grant I filed on the day of an affidavit of valuation as required by sec. 19*I* of the Court Fees Act and disclosed therein the net value of the estate as Rs. (under Rs. 1,000) and no duty was paid by me as is evidenced by the grant now produced.

5. That since the issue of the grant (follow para. 7, Appendix A).

6. (Follow para. 8, Appendix A, if Account and Inventory filed.)

7. (Follow para. 7, Appendix B.)

8. That the net value of the estate works out to Rs. (over Rs. 1,000) and that duty amounting to Rs. at the scale of (2, 2½, or 3 per cent.) now becomes payable.

9. (Follow para. 10, Appendix B.)

10. That I am now anxious to pay the duty now found payable (follow para. 15, Appendix C).

Sworn by the said C.D. this
day of
Before me

Commissioner, &c.

Note.

See note to Appendix "C" and also "A."

APPENDIX E.

Here it is proposed to give an idea of two forms of affidavits in use in Probate, etc., Division of the High Court of Justice in England.

This is done to afford a comparison with the forms of affidavit in use in India, under the Court Fees Act. Printed copies of all forms in use in England can be obtained from law stationers.

The two forms here referred to are :—

1. Form A relating to Probate Duty.

2. Form A 3 relating to Estate Duty. This form is used in all cases for original grants, where deceased died after 1st August, 1894, and prior to 19th April, 1907, except where Form B 2, B 3, A 4, or A 6 is applicable.

3. As regards deaths after 19th April, 1907, Form A 7 is used, and as to this see notes after Form A. 3.

4. The headings of the affidavit are as follows:—

In the High Court of Justice
Probate, Divorce and Admiralty Division
(Probate)
The Registry
In the Estate of deceased
I
make oath and say as follows:—

AS TO FORMS FOR PROBATE DUTY.

Form A (only applicable where deceased died on or before 1st August, 1894).

This is a form of affidavit and the purport thereof may be summarised as follows:—

Para. i.—Deals with desire to obtain a grant to the estate of the deceased, who is named, and his or her place of residence, and death given.

Para. ii.—Here reference is made to Account No. 1 annexed, setting out particulars, so far as known, of *Personal Estate* whether in possession or reversion (excluding property held as trustee) giving *gross value* and stating separately value in England, Scotland and Ireland.

Para. iii.—States whether real estate owned or not in United Kingdom, and, if so, where.

Para iv.—Refers to personal estate outside United Kingdom set out in Account No. 2 (if any).

Para v.—Refers to deceased having left husband or widow, or children or issue, or lineal ancestor.

Para. vi.—Refers to debts in United Kingdom in first part of Schedule, and funeral expenses in second part.

Para. vii.—Refers to debts being payable out of estate in Account No. 1, and that they are not voluntary, or in respect whereof a reimbursement is capable from any real estate, or from any other estate or person.

Para. viii.—Refers to net value after deductions of debts from gross value as given in Account No. 1.

SUMMARY OF ACCOUNTS, ETC., REFERRED TO

(1) ACCOUNT No. 1. (*Personal Estate in the United Kingdom.*)	£ s. d.	Market Price of stocks at date of affidavit.	Gross Value. £ s. d.
1. Stocks or Funds (including exchequer bills) of the United Kingdom ...			
2. Stocks, Funds or Bonds of Foreign countries or of British Dependencies and Colonies transferable in the United Kingdom			
3. Proprietary Shares or Debenture of Public Companies			
4. Dividends and interest declared, received and accrued due in respect of the above Investments to date of affidavit *as per Statement annexed*			
5. Cash in the House			
6. Cash at the Bankers— (1) on drawing account including interest, if any, to date of affidavit ... ... (2) on deposit including interest to date of affidavit			
7. Money out on mortgage and interest thereon to date of affidavit *as per Statement annexed* ...			
8. Money out on Bonds, Bill, Promissory notes and other securities and interest thereon to date of affidavit *as per Statement annexed* ...			
9. Book debts			
10. Other debts as per list attached			

	Gross value. £ s. d.
11. Unpaid purchase money of Real and Leasehold Estate contracted in the lifetime of the deceased to be sold	
12. Deceased's interest in proceeds of sale of Real Estate directed to be sold by settlement or by will of some other person whether actually sold or not estimated at	
13. Personal Estate over which the deceased had and exercised absolute power of appointment ...	
14. Policies of Insurance and Bonuses, if any, thereon on the life of the deceased *as per Statement annexed*	
15. Saleable value of policies of Insurance and Bonuses, if any, on the life of any person other than the deceased *as per Statement annexed* ...	
16. Household goods, pictures, china, linen, apparels, books, plates, jewels, carriages, horses, etc.—	
If sold, realised gross £	
If unsold, estimated at £	
17. Stock in Trade, Live and Dead, Farming Stock, Implements of Husbandry, etc.—	
If sold, realised gross £	
If unsold, estimated at £	
18. Goodwill of business—	
If taken over, at a price £	
If valued, according to custom of trades £ ...	
If neither, estimated at £ ... ... (viz., years purchase of net profits.)	
19. Profits of business from to date of affidavit	
20. Ships and Shares of Ships registered at Ports in the United Kingdom and profits of same to date of affidavit *as per Statement annexed* (estimated at)	

	Gross value. £ s. d.
21. The deceased's share in the Real and Personal Estate as a partner in the firm of as per balance sheet annexed signed by the surviving partners if none estimated at ...	
22. Leasehold property (*as per detailed description subjoined or annexed*)	
GIVING— 1. Particular description 2. Term unexpired at date of affidavit ... 3. Gross Rents where let, or, if not let, either the assessment to property tax (state the gross assessment, not the reduced assessment for collection of Income Tax under the Finance Act 1894, sec. 56) as the gross (not rateable) assessment to poor rate ... ... 4. The ground rent ... 5. The nature and amount of the yearly outgoings paid by the lessee as owner ...	If sold, realised gross £ ... If unsold, estimated £ ... Less a mortgage debt of £ ... due from the deceased, created by an Indenture dated the day of for which the said leasehold property is the sole security.	
23. Rents of the deceased's own Real and Leasehold property due prior to the death but not received by the deceased, estimated at		
24. Rents of the deceased's Leasehold property accrued since the death and apportionment of the rents to date of affidavit, estimated at ...		
25. Apportionment of the rents of the deceased's Real Estate to date of death, estimated at ...		

	Gross value. £ s. d.
26. Income accrued due, but not received, prior to the death arising from Real and Personal Estate of which the deceased was tenant for life and for any less period, *viz.*	
27. Apportionment of such income to date of death	
28. The deceased's interest expectant upon the death of now aged years under the will of proved or under the Settlement, dated the day of and made between (setting out parties to the deed) in the property set out in the Exhibit annexed and of which fund the present Trustees are	
29. Other Personal Estate not comprised under the foregoing heads, *viz.*	
(The deceased is believed to have been possessed of other Personal Estate and effects the precise details of which cannot at present be ascertained, but in respect of which a corrective affidavit will be delivered duly stamped as soon as the particulars and value thereof have been discovered.)	
To be signed by the persons making oath or affirmation.	

ACCOUNT 2.

Personal Estate locally situate out of the United Kingdom, which is not saleable or transferable in the United Kingdom and in respect of which no grant is required.

To be signed as above.

SCHEDULE.

Part I.—Containing an account of the debts due and owing from the deceased to persons resident in the United Kingdom.

Name and Address of Creditor.	Description of debt.	Amount. £ s. d.
	(This should include the date and particulars of any mortgage bond or other security for the debt)	

Part II.—Containing an account of the funeral expenses of the deceased.

	Particulars.	Amount. £ s. d.
Note.—The cost of mourning or tombstone is not allowed to be deducted ... To be signed as above.		

Note to above.—The reason for setting out particulars of the Accounts and Schedules is to afford a comparison with the form of affidavit prescribed by the Court Fees Act as amended by Act XI of 1899.

It will be noted that in regard to income accruing due on Personal Estate, which includes Leaseholds in England, this is shown as accrued *up to date of affidavit.*

1. General Forms.

Form A 3.

1. This is for use on deaths after 1st August, 1894, and prior to 19th April, 1907.

2. To be used in all cases where deceased died as above except where forms B 2, B 3, A 4 or A 6 are applicable.

3. The form of affidavit summarised is as follows :—

Para. 1. Statement as to desire to obtain grant giving name of deceased, residence, date and place of death, and domicile; (*see notes on this point if domicile outside United Kingdom, page* 32 *ante*).

Para. 2. Refers to relations left, such as husband, wife, children, parent, grand parent, etc.

Para. 3. Refers to first part, Account No. 1, containing particulars and value, *as at date of death*, of *personal property* in United Kingdom, whether in possession or reversion (excluding property held as trustee, but including that over which deceased had, and exercised by will, an absolute power of appointment) gives gross value of same and apportions value to England, Scotland and Ireland.

Para. 4. Refers to first part, Schedule 1, containing list of debts, due at time of death, due to persons resident in *United Kingdom* or outside, but contracted to be paid within, or charged on property situate within, with names and addresses, and amounts due, and the second part containing account of *funeral expenses*.

Para. 5. Deals with net value, *i.e.*, deducting debts and funeral expenses from total in Account No. 1.

Para. 6. Deals with second part, Account No. 1, giving particulars of Real Property situate in *England* vested in deceased with right in other person to take by survivorship, including that over which the deceased executed by will a general power. Excluding copyhold or customary freehold where an act or admission by Lord of Manor necessary to perfect title of a purchaser from customary tenant. Giving gross value *at time of death*.

Para. 7. Deals with gross value of estate, which by law devolves to and vests in personal representative, for and in respect of which grant is to be made.

Para. 8. Deals with Account No. 2 containing particulars and value of personal or moveable estate outside

United Kingdom excluding that held as trustee but including that over which deceased had and exercised by will an absolute power.

Para. 9. Deals with Schedule 2, account relating to debts due to persons resident out of United Kingdom (other than those in Schedule 1) also amount of duty payable in foreign country as to property included in Account No. 2.

Para. 10. That debts in Schedule Nos. 1 and 2 are payable by law out of property in Account Nos. 1 (1st part) and 2 and are *bonâ fide* incurred for consideration, and not primarily payable out of real property or in respect of which there is a right of reimbursement.

Para. 11. Refers to other property of which deceased was competent to dispose, set out in Account No. 3 (a).

Para. 12. Refers to power to charge money on real property. Set out in Account No. 3 (b).

Para. 13. Refers to other property, particulars not fully ascertained, and set out in separate account referred to as an Exhibit, and an undertaking to bring in particulars when ascertained.

Para. 14. Refers to other property under any title, and if any set out in appropriate account annexed and marked.

Para. 15. As to election to pay duty not only on Account Nos. 1 (first part) 2, 3 (a), 3 (b), but on part or whole in Account No. 1 (second part) of which particulars and value set out in *Account Nos.* 4 *and* 5.

Para. 16. Deals with *Schedule* 4 *and* 5, list of debts and incumbrances on leaseholds for years and really comprised in *Accounts Nos.* 4 *and* 5, and names and addresses of persons in whom vested.

Para. 17. As to how above were created, *i.e.*, *bonâ fide*, and for full consideration and for deceased's own benefit and are not primarily chargeable on any other property or any right of reimbursement.

Para. 18. That duty payable in a British possession to which sec. 20 of the Act applies in respect of

property included in Accounts Nos. 2, 3(a) and 4 situate in such possession, is £

Para. 19. That duty deductible under sec. 21 against duty now payable on property in Account Nos. 1 (first part), 3 (a), and 4 and which has been paid or is payable, is £

Then follows declaration of truth and jurat.

SUMMARY OF ACCOUNTS, ETC., REFERRED TO.

ACCOUNT 1.

Personal Property situate in the United Kingdom and Real Property situate in England for and in respect of which the grant is made.

PART I.—PERSONAL PROPERTY.

	Nominal value of Stocks. £ s. d.	Market price of Stocks at date of death.	Gross principal value at date of death. £ s. d.
1. Stocks or Funds, etc. (Same as an affidavit for probate duty. See form A under that head, page 199 *ante*)			

Dividends and interest, etc., accrued in respect of above investments to *date of death*, as per statement annexed ... ...

Cash in the house ... ...

Then follow the various headings as in Form A Probate duty but interest, etc., is only given up to *date of death* ... ...

		Gross principal value at date of death.
After the last item "Other property, etc., comes the following:—	£ s. d.	£ s. d.
(*a*) Gross Personal Property in part Account I ... £ (para. 3 of affidavit)		
(*b*) Deduct total of 1st and 2nd parts of Schedule I ... £ (para. 5 of affidavit)		
(*c*) Net personal property in 1st part Account I ... ... £ (reduced value para. 5 of affidavit) ...		
(*d*) Deduct specific articles whereon Estate duty is neither payable at all or is not now payable ... £ (articles bequeathed for national purposes or to be engaged in succession—Sec. 15, Act 94 and 20 Act 1896 if authorised) ...		
(*e*) Balance remaining £		
(*f*) Deduct personal property referred to in Note X of page I, if any, in Account I (1st part) which is to be treated as an estate by itself ... £ (Note X refers to power after 1st Aug., 1894, and prior to 9th April, 1900) against para. 3 of affidavit ...		
(*g*) Balance remaining £		
	£	

ACCOUNT 1.—*continued.*

PART II.—REAL PROPERTY IN ENGLAND.

(For use only where death on or after 1st January 1898.)

Not to include copyhold tenure or customary tenure, etc.

	Gross annual value at date of death.			Gross principal value at date of death.		
	£	s.	d.	£	s.	d.
Real Property in England vested in the deceased without a right in any other person to take by survivorship ...						
Real Property in England over which the deceased executed by will a general power of appointment (particulars of property on which duty is to be paid at time is to be included in 3rd part, Account 5) ...						
This is the gross value which is carried to para. 6 ...			£			
Total of 1st and 2nd parts £			£			

SCHEDULE I.

First Part.—Debts due to persons in United Kingdom or persons outside, but contracted to be paid in the United Kingdom or charged on property situate in the United Kingdom.

Note.—Where debts exceed personal property and the deficiency is a proper deduction for estate duty against Royalty, deduction may be taken in Schedule 5.

Name and Address of Creditor.	Description of debt (*i.e.*, date and short particulars of any security).	Amount.
		£ s. d.
	£	

Second Part—An Account of the Several Expenses—

The cost of mourning or tombstone cannot be deducted	£	
	Total of 1st and 2nd parts £	

To be signed by the person making the oath.

ACCOUNT 2.

Personal or Moveable Property situate abroad which is not saleable or transferable in the United Kingdom (if it is, should be in Account No. 1).

Particulars and local situation of the property.	Principal value at date of death.
	£ s. d.
Gross Value ... £	
Deduct Total of Schedule 2 ... £	
Net Total ... £	
(Amount to be carried to summary.)	

To be signed by the person making the oath.

SCHEDULE II.

An account of debts, etc., to person resident out of the United Kingdom other than debts contracted to be paid in the United Kingdom or charged on property situate within the United Kingdom, which have been deducted in the above Schedule 1.

Name and Address of Creditor.	Description of Debt, giving dates, etc.	Amount.
		£ s. d.
To be signed, etc.	£	

ACCOUNT 3 (A) AND 3 (B).

3 (a). Of personal property other than that in Nos. 1 and 2, of which the deceased at time of the death was competent to dispose, but did not dispose. Duty is payable on delivery of affidavit.

3 (b). Of money which the deceased had a general power to charge on Real Property, whether the power was exercised by will or not. Duty is payable on delivery of affidavit.

Material particulars of disposition conferring the power with date of, and name of parties to, any deed and name of any testator and date of probate of his will.	Particulars of property.	Principal value at date of death.
		£ s. d.
3 (a)	Gross value £	
	Deduct debts and incumbrances upon leasehold £	
	Net value £ (carried to summary).	
3 (b)		
1. Where the power was exercised		
2. Where the power was not exercised		
To be signed, etc.	This is the amount to be carried to summary £	

ACCOUNT 4.

An account of other Personal property passing on death (including leaseholds for years in which the deceased's interest was less than an absolute interest) whereon the Estate Duty is elected to be paid on the delivery of this affidavit.

Title to Property.	Particulars of Property.	Principal value at date of death.
		£ s. d.
Date and short material particulars of disposition with dates and names of parties to deed and names of any testator and date of probate. Names and addresses of beneficiaries together with their relationship to the deceased and to the predecessor from whom the property is derived ...	A separate statement should be attached giving full particulars as in account of any leasehold for years.	
	Gross value £	
	Deduct debts and incumbrances upon leasehold £	
	Net value £	

To be signed, etc. (To be carried to summary)

ACCOUNT

An account of Real Property on death whereon Estate

Title, under which the Property passes on death, date and short material particulars, etc. (see form 4.)	Description of property including situation, tenure, quantity, tenants' names and nature of tenancy.	Rental if let, or gross (not rateable) values for poor rate if unlet and not assessed to property tax.			Value for property tax—State the gross assessment and not the reduced assessment for income tax under Act 1894. Sec. 36.		
		£	s.	d.	£	s.	d.
1*st Part.*—Real property passing under the deceased's will, or intestacy, other than the property in the 2nd part. England, Scotland ...							
2*nd Part.*—Land of copyhold tenure or customary freehold passing as in Part I where an admission or act of the Lord of Manor is necessary to perfect the title of a purchaser from the customary tenant ...							
3*rd Part.*—Real property over which the deceased executed by will a general power other than property in 4th part. (England, Scotland and Ireland)							
4*th Part.*—Land as in 2nd part over which the deceased executed a form as in third part							
5*th Part.*—Real property passing under other titles ...							

Note—If any part of the property in this account is not fully aggregable with the deceased's free property, a separate statement should be annexed showing: (*a*) the amount fully aggregable with the free property; (*b*) the

No. 5.

Duty is elected to be paid on delivery of affidavit.

Nature of deductions from gross value—tenants' outgoings not to be deducted unless paid by owner.	Amount of deductions. £	s.	d.	Net annual value. £	s.	d.	No. of years purchase as estimated.	Estimated principal value at date of death and gross amount realised if since sold and date of competition of sale. £	s.	d.
Gross Value .. ... £										
Deduction in Schedule 5 ... ... £										
Net Value ... ... £										

amount of any property which would be fully aggregable, but is not, because the free and other unsettled property is by reason of its small value an estate by itself.

SCHEDULE V.

An account of the debts and encumbrances upon the Real Property in Account No. 5.

Where the debts exceed the value thereof and the deficiency is a proper deduction for Estate Duty purposes against the deceased's personal property, deduction of such deficiency may be taken in Schedule No. 1.

Nature of debt or encumbrance and by whom created.	Short material particulars of security with date of and names of parties to any deed and name of testator and date of probate of his will.	Short particulars of property charged to identify it in the above account.	Names and addresses of persons to or in whom the debt or incumbrance is now due or vested.	Amount of debt or encumbrance. £ s. d.
To be signed, etc.				

Notes on above.

1. After setting out Schedule 5 on pages 8 to 10 is given a summary of the affidavit set out in two parts. Part 1 relating to the deceased's free property, and property fully aggregable therewith, and Part 2 such property not fully aggregable with the free property.

11. The object of referring rather fully to Form No. A. 3 is to afford a comparison with the Form as given in the Court Fees Act in India, and it will also curtail the summary of other Forms hereafter referred to.

12. Attention is here directed to the fact that the value in each case is taken *as on date of death*, and interest is calculated and rents, etc., apportioned up to that date.

A7. This is for use where the deceased died on or after 19th April, 1907.

The form of the affidavit and annexures thereto are identical with the form as given in Form A. 3 except as follows:—

Paras. 18 and 19 of Form A 3 are not included in this affidavit. Account No. 5 only contains two columns.

1. The title under which the property passes on the death of the deceased.	Total estimated principal value as at date of death (from Form No. 37.)
(Under this heading are the same headings as in Account No. 5 to Form A 3.)	(Here is given the value in £ s. d.)

With the above are delivered.

1. *Form* 36.—Which contains observations in the form of questions as to settlements, and Life interests, and gifts *inter vivos*, Policies of Insurance (including nomination policies, and property held jointly). There is a column for answers.

2. *Form* 37.—A Schedule of Real $\frac{\text{and}}{\text{or}}$ Leasehold property containing 8 columns specifying similar information as set out in the columns given in Account No. 5 to Form A 3.

3. *Form* 28.—An abstract of the affidavit set out in three parts as follows:—

Part 1.—The deceased's free property and property aggregable therewith.

Then follow totals of various accounts and schedules and property referred to in para. 15 of affidavit, each given separately.

And deduction for value of interests in expectancy and value of property referred to in para. 15.

The net value is then given of aggregable property on which Estate Duty is payable. At the foot of this is a tabular statement as to duty payable.

Part 2. Property not aggregable with the deceased's property, *i.e.*, property forming an estate by itself.

This is done in a tabular statement under following

Personal Property.	Gross Capital. £ s. d.	Debts and deductions. £ s. d.	Net Capital adjusted where necessary. £ s. d.	% Rate per cent.
Separate Estate				
Do.				
Do.				
Do.				
Real Property.				
Separate Estate				
Do.				
Do.				

Total duty and interest on property not aggregable

headings.

Duty. £ s. d.	Deductions under 21 Act 196, 15 Act 1907, 15 Act 1914. £ s. d.	Net duty. £ s. d.	Interest Number of days.	Amount. £ s. d.	Total duty and interest on each estate.

with free-property as detailed above £

GENERAL INDEX.

A

B

C

D

E

V

W

Z